

THE
~~DEFLECTION~~
~~OF THE~~
Church of Scotland

FROM HER
REFORMATION-PRINCIPLES
CONSIDERED:

BEING A
PROTEST

BY

Some Members of the General Assembly of
that Church against her Act pass'd the
15th of May 1732, anent the Method of
Planting vacant Churches.

WITH AN
INTRODUCTION and APPENDIX;

Rev. ii. 5. Remember therefore from whence thou art fallen,
and repent, and do the first Works; or else I will come unto
thee quickly, and will remove thy Candlestick out of his Place,
except thou repent.

EDINBURGH,
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ROBERTSON. M.DCC.XXXIII.

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Advertisement.

TO save Repetition of what is already published, we are obliged in the following Sheets now and then to refer to a Pamphlet, printed last Assembly, Intituled, An Enquiry into the Method of settling Parishes, conform to the Acts and Practice of the Church of Scotland, &c. whereby it is distinguished from another of that Name then printed, called, A modest and humble Enquiry into the Method of settling Parishes, &c.



INTRODUCTION.



AS Peace and Truth are the two inestimable Blessings of a Church, there is no Man who wishes well to that of ours, but must be concerned for her Situation with respect to the first, whatever his Judgment is against the latter; while he beholds the one Part of us complaining of Attempts, to introduce a Course of Defection from our first Principles, and the other Part exclaiming as loudly of our want of Charity in that Point.

The Question still in Dependence betwixt us is, Whether the Offence is truly given, or that it is only taken? But, because our Answer to this, so far as concerns the Point we intend to consider, must wait the Examination of the Whole of what we have to say, we shall therefore leave it to that Issue.

Mean Time that Endeavours of this Kind do generally meet with the Reflection, as if they were Attempts to disturb our present Peace and Quier; we must therefore be allowed to observe, That the same Authority, which has enjoined us to Peace, and to love one another, has also commanded us to be zealous for the Truth, *and to contend earnestly for the Faith once delivered to the Saints.*

And, as it might be made appear, from the very Nature of the Moral Law, as well as the Express Com-

mands of the Gospel, that Articles of Truth are by no Means to be risked, even for the Sake of Peace; so on the other Hand we own, that, in all our Questions about Truth, we ought still to shew that just Regard to the Love and Respect we so necessarily owe to one another, by avoiding those personal Reflections, which generally find too much Place in Debates of this Kind; while we confine ourselves to a sincere and earnest Contending with our Church, for what we conceive to be Truth, and even her own very Principles; in which if we are found in the Wrong, as to any Thing we advance, we may justly claim the same Treatment from those who shall afterwards attempt to rectify our Mistake.

For, as a fair Reasoning, in our Search after Truth, does, by the most natural Right that can be, claim an impartial Examination of what is advanced; so, when it anywise tends to discover what is wrong in our Neighbour, or the Church, or present Generation, with the single Intention of having that rectified, it is really a Part of that very Love and Respect which we owe to one another by the Law of God: And, were our Enquiries after Truth, and Attempts for the Preservation of it, managed in this manner, without the Passion and Prejudice which too frequently attends them, our Peace and Quiet could be in no great Danger.

Wherefore we proceed to notice, That, as we dissented last Assembly from the Act we now complain of, and for the Reasons after-mentioned; so we urged, that such our Dissent should be allowed to enter the Record. But this our Desire was refused; wherefore we protested against the said Act, and for Liberty to publish our Reasons to the World.

The only Objections offered to this our Demand were, *1mo*, That such Dissents in Assembly were without all Precedent in this Church. *2do*, That they were unreasonable in their Nature, as being without any Effect: For, altho' Dissents were used in the inferior Courts of this Church, yet that was only to the Intent that

that the dissenting Members might save themselves from the Censure of their Superiors; but the Assembly having no Superior in the Church, therefore Dissents in that Court were unreasonable, and not to be allowed.

To these we answer, by denying the First to be true in Fact; and refusing the Sufficiency of the Second. For we find, That in the Assembly at *Edinburgh* 1586, Mr. *Andrew Hunter*, Mr. *Andrew Melvil*, and Mr. *Thomas Buchanan*, protested against the Act of that Assembly, restoring Mr. *Patrick Adamson* from the Sentence of Excommunication past against him (a). Besides, that it was only in a private Question, concludes more forcibly for the Liberty of protesting in Assembly, than if it had been in the Matter of a publick Law. In the Assembly at *Perth* 1597, The Members from *Fife* protested against all that was done in that Assembly (b). In the Assembly at *Dundee* 1598, Mr. *John Davidson* protested against their Act, allowing some Ministers to vote in Parliament (c). It is true, the Reasons of his Protest came into the King's Hands, then present, who put them in his Pocket, so that they were not entered the Record. In the Assembly holden at *Holyroodhouse* 1602, where the King was present, Mr. *James Melvil* protested against that Meeting of Assembly, because called by the King's Proclamation; and would not vote till his Protest was marked (d). From all which, it is evident, that Dissents and Protests are no new Thing in Assemblies, as is alledged.

And, even admitting that no such Instances could be given, yet, that our Demand is founded in the very Nature and Justice of the Thing; it ought not have been refused. For, as it is in the Nature of all Courts, that the Judgment of the Majority is the Judgment of the Court, and so of every Member of it, even of these who in the Vote differed from that Judgment, because from their Silence after Sentence, their Consent or Acquiescence

(a) See *Calderwood's Hist.* Pag. 211. (b) Ditto *Hist.* p. 394.
(c) Ditto *Hist.* p. 420. (d) Ditto *Hist.* p. 459.

science in that Judgment, is presumed ; *Nam qui tacet consentire videtur.*

So, on the other Hand, if that same Minority shall judge such Sentence or Vote of Court to be so far wrong, as that they can by no Means bear the Imputation of it ; in such Case they stand entitled (from that Liberty and Freedom inseparable from every Thing that relates to Judgment, which of its very Nature is abhorrent of all Constraint) still to withhold their Consent from such Sentence, and to insist on the legal Evidences of it, *viz.* by having their Dissent, with the Reasons of it, entered into the Record ; and which seems to be as really their Right, as it is of the other to have the Sentence itself recorded, since the Record is nothing else but the *res gesta* of the Court.

For, as it is really a Species of Oppression, to oblige one Man to ly under the Imputation of another Man's Fault, or to deny him the reasonable Means of his own Vindication ; so it is an eminent Injury to the present and subsequent Generations, thus to conceal or suppress any Part of the Truth, in order to represent a Harmony, where our Histories may show there was none.

And, as our Claim is thus plainly founded in the Justice and Reason of the Thing ; so we find in the Parliament of *Britain*, which is the supreme Court in the Nation, as much as the Assembly is in our Church, that Dissents and Protests are daily allowed as the undoubted Right of every Member. For, altho' it is true, that in Questions of private Right Dissents are not in Use to be made in Parliament, from this Superior Reason, That it is of the last Consequence to the Community, that Pleas and Debates anent private Right should terminate somewhere, and therefore of Necessity must be finished at the supreme Court, as being the last Resort ; yet, in all other Questions relative to the publick Administration, especially when any Law is enacted, Dissents and Protests are daily entered,

And notwithstanding that these Dissents cannot be to the Intent that they may avoid the Censure of any Superior ; yet are they not therefore without Effect,

as was objected to us in Assembly, but have this further and more valuable Effect, that the Reasons contained in them are so many Arguments, whereupon the Law complained of, may at any Time thereafter be taken up towards a Repeal of it : And for this great and valuable Purpose it is they are thus so frequently used in Parliament. Wherefore that this our Act of Assembly is in Contradiction to several preceeding Acts of our Church, which are thereby virtually repealed ; and as we are induced to hope for a Resurrection in this Matter, and incline to think the Reasons we have to offer, sufficient for a Repeal of that Act, we therefore did, and do still, insist in our Protest against it.

Upon the whole it is evident, that, even admitting there were no such Instances of this Practice in our Church ; yet, seeing our Demand is thus plainly founded in that common Justice due to the Members of a Court (especially where 'tis a Court of Conscience) and the Interest of the present and subsequent Generations therein, as well as the daily Practice of other supreme Courts in like Cases, the denying this reasonable Mean so necessary for our Vindication, as it seems really to be a Species of Oppression ; and especially that it relates to a Point of Judgment ; So we cannot help thinking that it more forcibly affects that Judgment, than if our Dissent had been recorded.

We shall only further observe on this Head, That, in the Assembly, when we were refused to have our Dissent entred, and that we still insisted on that Point of Right, it was proposed by some Members, that, for the Sake of Peace, we should be allowed to have our Names marked as having dissented, without any Reasons subjoined ; but that was refused : And thereafter it was proposed by others, that at least it might be recorded that some dissented, without Mention of either Names or Reasons, but that also was refused ; and all this by the Authority of some few, without allowing us a Vote of the House for that Point of our Right altho' much insisted on by us ; and which ought not to have

have been refused an Appellant at the Bar on any Point of Right, and much less to Members of Court. But we waive the further Reflections which either the Manner or Matter of that Treatment might bear, save only that as a Publication of our Dissent became thus the only Means left for our Vindication, whatever Influence that may hereafter have on the Peace and Quiet of the Church, it is more than evident who are to blame for it, since the very smallest Concession could thus by no Means be obtained. But further, because we find ourselves somewhat wronged in this our Protest, we beg Leave to make the few following Observes ;

1770. We are frequently represented as if nothing would please us, unless the Popular or Pole Elections in the Settlement of Ministers were again restored. To this we answer, That altho' we cannot help thinking our Church ought at least to have held up her Hands from enacting any positive Rule in Contradiction thereto, as we hope, by what follows, to convince every reasonable Man was her Duty: Yet for the present, waving all Dispute and Consideration of such Elections, what still sticks with us, and to which, because of our present Circumstances, we are content to confine our Plea, is, That, altho' we grant, in the extraordinary Case where a People are negligent or averse to have a proper Pastor, One should be sent to convince them of their Error, and labour amongst them for that Purpose ; yet, where the Parish shews a Concern and Anxiety about a fit Pastor, it is in that Case the fixed Principle of this Church, as shall be made appear, and we do insist upon it, That no Man should be thrust upon them, contrary to the Will of the Congregation. A Principle, so necessary and unavoidable, that, as it forms the strongest Idea of Civil Oppression, that a Society should be obliged to credit a Man with the Whole of their temporal Concerns, who is thrust in upon them over their Belly, and, on that Account, the Object of their Jealousy and Aversion ; so it can be no less in Spirituals, but especially with People who have been

been train'd up to a Liberty in that Point, as we have been from the Reformation, and that secured to us by the strongest Bands that could be well contrived, as we shall hear: Besides, that this Principle appears really to be founded in the very Nature and Order of the Thing, from this Consideration,

That, as the great End of a Gospel-ministry, and so of all Settlements thereof, is *Edification*; (for to what Intent is either Parish, Stipend, Church, or any Thing relative hereto without it?) so the essential and necessary Means for obtaining that great End, are, *1mo*, That the Candidate be no Ignorant, but qualified for that Purpose. *2do*, That the Parish be willing to receive Edification from him, which is equally necessary with the former; for, if they will not consent to receive him as their Minister, and submit to him as such in the Lord, it is plain, that their Edification from him can no more follow, than if he was ignorant and incapable. And, seeing it is absurd for Men to design Means destructive of the End, it thence follows, that every Rule anent Settlements, whether emitted by Church or State, ought necessarily to be burdened with these Two.

Wherefore was this Point fixed, That no Man was to be thrust upon a Parish against their Will, or of the Majority of them? We should by no Means dispute, whether the Election was performed by Heritors, or Elders, or by the Presbytery. And, had such a Clause been allowed to enter the Act in Question, we are perswaded our Church had met with no Disturbance from our Protest. But, notwithstanding that this seems to be so indispensibly necessary, and was proposed at forming, or rather reforming, the Draught of this Act last Assembly; yet it could by no Means be allowed to enter into it, and is therefore the principal Ground of our present Complaint.

2do, It is again earnestly urged by some, that this Act in Question, is no other than a Revival of that Rule, which was formerly practised by our Church with so much Approbation from the 1690 to 1712.

To which we beg Leave to answer, That, during all that Period, it was only a Rule of the State, substitute in Place of a rigid Patronage, which, during the preceding Period, had been execute with great Severity; and for this Reason allenary it was, that the Act 1690 became acceptable to our Ministers at that Time, as being of these Two by far the most eligible. But then, this Rule never did, nor was it possible it should ever have received the Sanction of the Church, as shall afterwards appear.

And further, it must be observed, That, as the Act 1690 allenary creates to the Heritors a Civil Right, as we shall hereafter shew, which no Church Canon can possibly do, as having nothing to give that is Civil; so, in like Manner, being conceived in Terms so very general, and the Execution wholly left to the Church, they, by their reasonable and cautious Application of it, still shewed a just Regard to their former Principles, insomuch, that in many Places the Election was performed by Heritors, Elders, and Heads of Families: Which last, had they been added in this our new Act, it had for ever quieted the Minds of the discontented Part of the Nation.

Besides, that, when Divisions arose to any Height, through the Competition of Candidates, the Practice was to set both aside, which seldom failed of producing a Harmony in some third Person; altho' in that Case, when all the legal Electors were thus in the Field, one or other of the Candidates must have had the legal Title, as much as any Man can now have it on a Presentation by a Patron: Which is plainly the Reverse of our present Practice. Besides, that this new Act, being become a direct Canon of our Church, is also formed in Terms so special and particular, that it excludes for ever such reasonable and cautious Application.

Wherefore what we complain of is, that any such Rule should ever have received the Ecclesiastick Sanction, which is thereby become a Canon of our Church, in plain Contradiction to her former Principles and Practice, which she herself has founded on the Word of

of God, as we shall presently make appear; so that our Objections against the Act in Question may be reduced to these Two;

1^{mo}, That our Church having once declared her Principles anent the People's Right to chuse their own Pastor in Terms so strong, as shall hereafter be pointed out, and founded her Assertions on a Warrant so awful as the Word of God, she ought not to have made any Rule inconsistent therewith.

2^{do}, That no Rule whatsoever ought to have proceeded from our Church, which anywise seems to favour the thrusting in a Minister upon a Parish against the Will of the Congregation, or is destructive of their Consent; so necessary in the very Nature of the Thing as above set forth, and founded, as the Right of the People of *Scotland*, by the express Authority of both Church and State; and that in a Manner so extraordinary, with Respect to both, as shall presently be made appear.

And, because in these two Objections to the Act in Question, we have founded a Distinction betwixt the positive Part of Election, and the People's necessary Consent: By the first of which, we understand a Right to name or propose the Candidate; and by the last, the People's Consent or Approbation of that Candidate, which is only a Negative upon the former: And, altho' these, in Effect, may seem to be near of Kin, yet that Distinction is become necessary for explaining our Books of Discipline, as well as that of the Law concerning Patronage: Anent which last, altho' we allow, that it contains this Power to name the Person; yet, at the same Time, we affirm, that it always was since the Reformation, and is still by Law, affected with this Negative of the Congregation, as shall hereafter be instructed; and therefore thought fit to notice this Distinction to which we are now and then necessitate, in what follows of this Paper.

And further, because some love to doubt about Terms, altho' they are never so evident, we therefore affirm, That, by the *People* of a Parish, we mean the

Congregation; and by the *Congregation*, we mean that Definition or Description of it which we have in our *Westminster Directory for Church-government*, Section 7th, viz. *A certain Company of Christians who meet in one Assembly ordinarily for publick Worship;* and by either of these, we still mean the Majority to be the Parish or Congregation, as being inlaid in the very Nature of Society or other collective Body.

ACT of the General Assembly of the Church of Scotland, concerning the Method of Planting vacant Churches.

May 15. 1732.

THE General Assembly taking to their serious Consideration, how necessary it is, That (until it shall please God in his Providence to relieve this Church from the Grievances arising from the *Act restoring Patronages*) there should be an established Rule for the Planting of vacant Parishes, when the Right of doing so falls into the Hands of Presbyteries, either *tanquam jure devoluto*, or by the Consent of such as have Interest: And that there may be an uniform Method followed by Presbyteries in this Matter, and so the unhappy Debates and Divisions which have often fallen out upon such Occasions, may be prevented in Time coming; and also, that it may be evident, that this Church desires to have all the Parishes in it settled in such a Manner, as may give reasonable Satisfaction to all concerned; Therefore enacts and ordains, That all Presbyteries, when the Planting of any Parish shall fall into their Hands *tanquam jure devoluto*, take Care to have the same supplied by a well-qualified Gospel-Minister, to labour among the People for their spiritual Edification; And

in order thereunto, when Application shall be made unto them by any two or more of the Heritors and Elders, jointly or separately, for the Moderation of a Call, the Presbytery shall appoint Intimation to be made from the Pulpit of the vacant Parish, ten free Days before the Meeting for that Effect, that a Call is to be moderated, and shall appoint one or more of their Number, who, after Sermon, shall meet with the Heritors and Elders of the vacant Parish, in Presence of the Congregation, upon the Day fixed for the Moderation, to moderate in a Call to one to be Minister of the Parish, who is to be elected and called by the Heritors and Elders in a conjunct Meeting. That, after the finishing of the Election, the Person so elected to be Minister, shall be proposed to the Congregation, to be either approven or disapproven of by them; that the Disapprovers shall offer their Reasons to the Presbytery of the Bounds, at whose Judgment, and by whose Determination, the Calling and Entry of the Minister shall be ordered and concluded according to the Rules of this Church. That, in Case of Vacancies in Royal-burghs, the Election or Call shall be by the Magistrates, Town-council and Elders in a joint Meeting, where there is no landward Parish; and by the Magistrates, Town-council, Heritors and Elders in a joint Meeting where Part of the Parish is so landward. And the General Assembly declares, That all Heritors being Protestants, who shall be willing to subscribe the Call by themselves or their lawful Proxies, or who shall by a Writing under their Hand invite the Person called to be Minister of the Parish, and to exercise the Duties of his ministerial Function, and promise to encourage him in it, shall be admitted to vote in Calls or Elections of Ministers to Vacant Parishes: And that no Vote, either of Heritors or Elders, shall be sustained, except such as shall have either signed the Call, or for whom there shall be produced a Writing in the Manner and to the Purpose above-mentioned, in Presence of the Minister moderating in the Call. And in case of any Difference among the Heritors

ritors and Elders, about the Person to be elected; the Minister moderating is appointed to reduce what shall be alledged on both Sides into a Minute, containing the true Matters of Fact impartially, and to lay the same before the Presbytery, for their Decision. And, in case no Application shall be made to the Presbytery, in Manner foresaid, by the Heritors or Elders, for moderating a Call within six Months after the jus devolutum begins to take Place; The General Assembly recommends it to Presbyteries to plant vacant Churches, in such Manner as shall contribute most to the Advancement of Religion, and to the Peace and Comfort of Parishes.

And, that there may be no unnecessary Delays in planting of Churches, the Assembly further Ordains, That in case within the Six Months next after the Vacancy, such as have Interest, shall show their Disposition to comply with this Ecclesiastical Rule, by applying to the Presbytery, to have the Parish planted in the Way and Manner above-specified, the Presbytery shall proceed to the Settlement thereof in the foresaid Way and Manner, without putting off till the said Six Months are expired. And the General Assembly recommends it to all Ministers, Preachers and Members of this Church, to take Care that they do not encourage, nor go into any Method for Planting vacant Churches, contrary to, or inconsistent with, this Act.

P R O

PROTEST.

AT *Edinburgh*, 16th of *May* 1732 Years, We Ministers and Elders hereto subscribing, Members of the General Assembly of the Church of *Scotland*, met at *Edinburgh* the 4th of the above Month, having offered our Dissent from the Act past the 15th of that same Month and Year, intituled, *Act unto the Method of planting vacant Churches*; and which Dissent, (with the Reasons thereof) being refused: We therefore, with most dutiful Reverence and Respect to this venerable Assembly, and, for the Exoneration of our Consciences akenarily; most humbly do protest; Likeas we by these Presents, for ourselves, and in Name of all others that may adhere to us, do protest against that Act, to the Effect that we may not be constructed, either to have consented to, or acquiesced therein, for the Reasons following, viz.

1st We conceive, that the restricting the Election or Calling of Ministers to the Heritors and Elders of a vacant Parish, exclusive of their Christian Brethren, to whom nothing is left by that Act, but a bare Approbation so generally expressed; and this same hampered, by obliging to give Reasons, that it can signify nothing but as the Presbytery pleases, is contrary to, or at least without any Authority from, the Word of God, *Acts* 1. 15. — 16. and *Acts* 6. 2. — 6. and *Acts* 14. 23. *James* 2. 1. — 7. Which Word of God we apprehend to be the only Warrant of all or any Church Act or Decision, from 31st Chapter of our *Confession*, Par. 3.

2^{do} That the foresaid Restriction appears plainly to us to be contrary unto, and inconsistent with, that Rule anent the Election and Calling of Ministers, established by our Books of Discipline and Acts of Assembly; whereby it is declared, not only that it appertaineth to the People of every several Congregation to elect

lect their Minister ; but also that no Person be intruded in any Office of the Kirk, contrary to the Will of such Congregation. And which Order of Settlement is by these Books of Discipline declared to be the Order which God's Word craves, 1st Book of Discipline, *Chap. 4. Parag. 2. and 4.* 2d B. of Discipline, *Chap. 3. Parag. 3. and 4. and Chap. 12. Parag. 9. and 10.* *Acts of Assembly 1562, 1578, 1581, 1590, 1591, 1596,* all ratified and renewed by the Acts of Assembly, 8, 10, 17 and 18 *December 1638.*

370, That the foresaid Restriction above-mentioned, as it is thus contrary to the Order of Settlement prescribed by the Books of Discipline ; it appears to be contrary, not only to our National Covenant and Confession, but also to the Laws and Acts of Parliament, ratifying the Doctrine, Discipline and Government of this Church, *viz. Parl. 5. June 1592,* intituled, Ratification of the Liberty of the true Kirk, of General and Synodical Assemblies, of Presbyteries, of Discipline ; which Act 1592 was ratified by the Act of Parliament 7th *June 1690,* establishing our Presbyterian Church-Government at the Revolution ; and which Act 1690, is again ratified by the Act 16th *January 1707,* securing the Protestant Religion and Presbyterian Church-Government, as an unalterable Condition of the Treaty of Union, by which this Right of the People of every several Congregation to chuse their own Pastor, or, at least, the necessary Consent of Parish and Presbytery in that Election, is thus, by the Declarators of our Church, founded on the Word of God, and ratified by the foresaid Acts of Parliament, affirmed so effectually to the several Members of every Congregation, that it cannot *de jure* be taken from them, unless that unquestionable Scripture-Evidence were adduced for this new Declarator of our Church, which we beg Leave to say is not, nor cannot so much as be pretended.

410, That such Restraint of the People's Right to elect, was never from the Reformation so much as pretended in this Church, even when Patronage was in its fullest Force, as we are ready to instruct. And further,
for

for a long Time, not even under Episcopacy itself; as appeareth from Bishop *Sporiswood*, Page 345. *Anno* 1624.

510, It appears from the 9th Act of Assembly 1697, that the passing of any Overture into an Act, is expressly clogged with the positive Consent, or general Approbation of this Church, anent the Expediency of it, to be signified by the Instructions of Presbyteries thereanent; which is only a further Ratification of the older Practice of this Church, as by Act 30th August 1639: And because it appears from the Instructions of the several Presbyteries anent the first Draught of this Act, that only six Presbyteries of this whole National Church instructed their Commissioners in Favours of this Act, and that twelve Presbyteries instructed for Amendment thereof, and no less than Thirty one Presbyteries have instructed against the Act *simpliciter*, the rest being silent about it; wherefore the Act ought, from the Necessity of these preceeding Rules and Practice of our Church, to have been dropt altogether; or, at least, having suffered such large Alterations and Additions by this Assembly, it might well be construed as a new Draught; which, on that Account, ought by the foresaid Rule and Practice to have been transmitted again to Presbyteries, for their further Judgment as to this new Shape. Yet, altho' this last was earnestly desired, it was not only refused, but was also precipitantly hurried over by a Vote of the House, without allowing the Members a full Reasoning, either as to the Illegality of it, or the Consequences that may follow upon it to this National Church.

Lastly, And however agreeable some such Rule as this might have been to those worthy Ministers of our Church at the Revolution, as it was then only a civil Constitution, far more eligible than a rigid Patronage; so we are bold to affirm, That, as they never did establish this as an Ecclesiastick Rule, so neither would they have consented to any such Act, for which there is no Precedent in the Practice of any well-constitute Church, that ever we heard of, in the Christian World; espe-

especially that, by Missives from Heritors disaffected to our Church and State, or Sectarians of all Kinds, the Election may be frequently over-ruled. And we protest for Liberty to add further Reasons, and to publish these our Reasons to the World.

N. B. We have at present waved the Names and Subscriptions of the Members of Assembly, and Adherers subjoined to this Paper; not only that large Protestations, attended with most numerous Subscriptions, are already published; but further, because the Nullity of this Act is so evidently made appear in what follows of this Paper, that we are still induced to hope, our Church will at least show so much Regard to her Reformation-Principles hereafter set forth, as to yield to some Redress in this Matter: And therefore, as we still incline to plead with our Church, to that Effect we have avoided the taking our last Remedy, before we had waited the Event of this our Expectation.



A P P E N D I X

SECTION I.

BECAUSE, as we just now observed, the preceeding Reasons of our Protest were put together with Haste in a Morning, to overtake the very last Diet of Assembly at 10 of the Clock; it became needful to subjoin what follows, for a further Illustration of them: And, altho' we are therein obliged to insist on several Things relative to our Reformation, which at this Time seems to be wrapt up

up in Oblivion, and whereby this Paper has swelled beyond our first Intention; yet in these we purpose Brevity as much as possible.

Therefore we take the first three Reasons of our Protest together, towards a Consideration of them. And here it might be expected, that we should offer some further Illustration of that Scripture-evidence for the People's Right to chuse their own Pastor; anent which, we must observe, That, as this was an Article of the Reformation disputed by the whole Divines of it, against the Church of Rome, whereby the Cavils against this Doctrine, with the necessary Answers thereto, are swelled to such considerable Extent, that it became impossible to attempt any full Vindication in this Paper, which must necessarily be done in a Treatise by itself, if needful: Mean Time, the Reader will find the Judgment of the most eminent Divines, both Foreign and Domestick, since the Reformation on this Head, with References to what they have said on these Texts; as also the Judgment of the Reformed Churches, in that Pamphlet mentioned in the preceeding Advertifement, Section 5 and 6 throughout.

But then it would be specially adverted to, as sufficient for our present Purpose, that in Respect this Question is already become a fixed Point with our Church, which she herself, in the very Articles of her Constitution and Policy, has founded on the Word of God, we thence are intituled to plead, and do insist upon it, That we can by no Means be obliged, in any Dispute with her thereanent, to prove from Scripture what she has already fixed thereupon: So that, when it is thus brought to the Case of *res judicata*, or a fixed Point, it is plain, that no Presbyterian of our Church can be allowed to dispute the Question, or so much as to be heard anent it.

Wherefore, we proceed to consider this Right, and how far it is fixed by our Church; which we find established by a fourfold Bond; 1^{mo}, By our Books of Discipline. 2^{do}, By our Acts of Assembly. 3^{io}, By our National Covenant, not to mention our Solemn

League, which some take the Liberty to dispute; but our National Covenant, otherwise called our Confession of Faith, was never disputed. 410, A Series of Acts of Parliament, from 1592 to the Union-Act, of all which in their Order.

SECTION II.

FIRST Book of Discipline, Chap. 4. *Paragraph* 1. " Ordinary Vocation consisteth in Election, Examination, and Admission. *Paragraph* 2. It appertaineth to the People, and to every several Congregation, to elect their own Minister. *Paragraph* 4. As for Example, the Council of the Church presents to any Church a Man to be their Minister, not knowing that they are otherwise provided; in the mean Time, the Church is provided of another, sufficient in their Judgment for that Charge, whom they present to the learned Ministers, and next Reformed Church, to be examined. In this Case, the Presentation of the People, to whom he should be appointed Pastor, must be preferred to the Presentation of the Council or greater Church, unless the Person presented by the inferior Church be judged unable of the Regimen by the Learned. For altogether this is to be avoided, That any Man be violently intruded or thrust in upon the Congregation; but this Liberty with all Care must be reserved to every several Church to have their Votes and Suffrages in the Election of their Ministers."

And *Paragraph* 8th, in the Chapter anent the Election of Superintendants, runs thus; " Which Day of Election being come, &c. If the Ministers of the whole Province should bring with them the Votes of them who are committed to their Care, the Election should be more free; but always the Votes of them that convene should be required."

Now, as to the following Passages of the second Book of Discipline, it must be specially noticed, That,
by

by *Eldership* in that Book, is still meant the *Presbytery*. For, that *Eldership* was the very Name of the Presbytery at that Time, is most distinctly made appear, from Page fifth to eighth of the forecited Pamphlet.

In the second Book of Discipline it stands thus, *Chapter 3d. Paragraph 3d.* "The other Calling is ordinary, which, besides the Calling of God and inward Testimony of a good Conscience, is the lawful Approbation and outward Judgment of Men, according to God's Word and Order established in his Kirk. *Paragraph 4th.* This ordinary and outward Calling hath two Parts, *Election* and *Ordination*; *Election* is the chusing out of a Person or Persons, most able, to the Office, that vaikes, by the Judgment of the Eldership, and Consent of the Congregation, to which shall be the Person or Persons appointed. *Paragraph 5th.* In the Order of *Election* is to be eschewed, that any Person be intruded in any Offices of the Kirk, contrary to the Will of the Congregation to which they are appointed, or without the Voice of the Eldership."

Second Book of Discipline, *Chapter 12th. Paragraph 9th.* "The Liberty of *Election* of Persons, called to the Ecclesiastical Functions, and observed without Interruption, so long as the Kirk was not corrupted by *Antichrist*, we desire to be restored and retained within this Realm: So that none be intruded upon any Congregation, either by the Prince, or any inferior Person, without lawful *Election*, and the Assent of the People over whom the Person is placed; as the Practice of the Apostolical and Primitive Kirk, and good Order craves. *Paragraph 10th.* And because this Order, which God's Word craves, cannot stand with Patronages and Presentations to Benefices, we desire all them that truly fear God, earnestly to consider, That, forasmuch as the Names of Patronages and Benefices, together with the Effect thereof, have flowed from the Pope, and Corruption of the Canon Law only, in so far as there-

“ thereby any Person was intruded or placed over
 “ Kirks, having *curam animarum* ; And forasmuch
 “ as that Manner of Proceeding hath no Ground in
 “ the Word of God, but is contrary unto the same,
 “ and to the said Liberty of Election, they ought not
 “ now to have Place in this Light of Reformation :
 “ And therefore, whosoever will embrace God’s Word,
 “ and desire the Kingdom of his Son Jesus Christ to
 “ be advanced, they will also embrace and receive that
 “ Policy and Order, which the Word of God, and up-
 “ right Estate of his Kirk, craves ; otherwise it is in vain
 “ that they have professed the same.”

SECTION III.

WE come now to consider the second Bond by
 which this Point is fixed, namely, our Acts
 of Assembly ; and, 1^{mo}, As to these which concern
 the Ratification of our Books of Discipline. 2^{do}, As
 to the other Acts of Assembly which affirm the Point
 in question. And, 3^{io}, To make it appear, that our
 Church has, in these her Acts and Books of Disci-
 pline, founded this Principle on the Word of God,
 which is therefore become a fixed Point with her.

As to the first of these, we find, that our first Book
 of Discipline being compiled by our Reformers before
 we had any Assemblies in our Church (the first of
 which was in *December 1560*, as Mr. *Calderwood* ob-
 serves) obtained the Ratification of the Council of
Scotland the 7th of *January 1560*, which, it seems,
 was then thought sufficient to command the Practice
 of it thro’ the Nation. However, we afterwards find
 this same Book acknowledged to have been the Dis-
 cipline of this Church, in that, no further than the
 1562, by an Act of Assembly that Year, *It is ordain-
 ed, That Inhibition be made against all and sundry
 Ministers then serving in the Church, who had entred
 to their Churches contrary to the Order appointed by
 the said 4th Head of the first Book of Discipline, con-
 cern-*

cerning the lawful Election of Ministers. And, by another Act of the same Assembly, it is appointed, *That a Minister lawfully admitted, shall not be removed, but according to the Order of the said Book of Discipline:* So that this first Book of Discipline is, by these Acts, declared to be both the Rule of Admission to the Ministry, and Removal from it.

And, as to the second Book of Discipline, the Act of Assembly 1578 declares, *That, because the true Religion is not able to continue or endure long without a good Discipline and Policy; in that Part have they employed their Wit and Study, and drawn forth out of the pure Fountains of God's Word, such Discipline as is meet to remain in the Kirk.* And, by Act of Assembly 1581, the said Book is ordained to be registered in their Books, and Copies thereof taken by every Presbytery; And, by Act 1590, it is appointed to be subscribed by every Member of this Church; and, by Act 1591, it is appointed to be kept and observed in all Parts of this Realm.

240. On this Head, besides these Acts, by which the Books of Discipline are thus ratified, we find, that, by Act of Assembly 1575, *It is appointed, That Ministers be settled in their Churches with Consent of the Ministers of the Province, and Consent of the Flocks to whom they be appointed;* And Anno 1596, the Assembly then finding, *That, notwithstanding of the Rules in their Books of Discipline, and Ratification thereof: Yet, such was the Power and Influence of Patrons at that Time, that some were even thrust upon Congregations; and, as the Act speaks, Who manifest thereafter that they were not called of God.* Therefore this Abuse is, not only mentioned as one of the Causes of a Fast then appointed and execute by the Members of Assembly amongst themselves, in the solemn most Manner that we read of, as well for the Sins and Corruptions amongst Ministers, as of all other Ranks; But, further, for Remedy thereof in Time coming, the Assembly appoints, *That none seek Presentations to Benefices, without the Advice of the Pres-*

Presbytery where the Benefice lieth; and, if any do in the contrary, that they be repelled, as rei ambitus.

For it is to be observed, That the accepting of Presentations was allowed to Ministers entered to their Charge, in order to give them an active Title to the Benefice; the Non-acceptance of which we find ascribed by the State, in their Answer to this very Assembly, as the Cause why Ministers were so ill paid of their Stipends, viz. That the Judges could not lend them their proper Aid for want of this active Title which the Law required: And therefore this very Assembly appoints, *That Ministers be dealt with to accept.* But then, such Acceptances were never allowed as a Means whereby to thrust themselves into the Ministry, or anywise to influence the Election.

Which appears from this very Act, whereby it is further appointed, *That it be enquired, if any by Solicitation or Moyen, directly or indirectly, press to enter into the said Office of the Ministry; and if it be found, that the Solicitor be repelled, and that the Presbytery repel all such of their Number from voting in the Election or Admission, as shall be found Moyeners for the Solicitor, and be posed on their Consciences to declare the Truth to that Effect.* This Act 1596 is again renewed by the Act of Assembly, 18th December 1638; in which, as they are therein reviving and renewing the former Acts of our Church, so we find (notwithstanding Patronage was then retained by the State) that in the 20th Article of this last Act, it is thus appointed, *Anent the presenting either Pastors, Readers, or Schoolmasters, that there be a Respect had to the Congregation, and that no Man be intruded in any Office of the Kirk, contrary to the Will of the Congregation to which they be appointed.*

3tio, It plainly appears, That our Church has founded this Principle on the Word of God; for, in the foresaid Act of Assembly 1578, they declare, *That they had drawn out of the pure Fountains of God's Word,*

Word, such a Discipline as is meet to remain in the Church. And, even in this very Point in Question, we find, second Book of Discipline, Chap. 12. Par. 9. that the Order of Settlement therein required is, *That none be obtruded upon any Congregation, without the lawful Election, and the Assent of the People.* And, Par. 12. they expressly affirm *this to be the Order which God's Word craves;* And therefore proceed to charge all Persons, *who embrace God's Word, and desire the Kingdom of his Son to be advanced, to embrace the same Order which the Word of God craves, else it is in vain they have professed the same.* From which, and other Passages to the same Purpose, it most plainly appears, that our Church has founded this Principle on the Word of God.

Therefore, as the Scripture-Evidence of this Principle is thus become a fixed Point with our Church, and thereby *res judicata* with her, it thence follows, as we before observed, That no Presbyterian in Scotland can so much as be heard or allowed to dispute the Matter, more than to impugn the whole Articles of our *Westminster-Confession*. If indeed it shall be found that there is an Error in the Case, our Church may and ought to proceed first to reform that Point, and then make new Constitutions repugnant thereto, whereby to prevent their obliging Men to Inconsistencies in their Standards; and, when that happens, we know what to say: But, till then, it is impossible that either our Church, or any Member of it, can be allowed thus to dispute against themselves.

SECTION IV.

HAVING thus far set forth the Passages of our Books of Discipline, and Ratifications thereof by our Acts of Assembly; and because we find several amongst us so exceeding averse to admit of our necessary Conclusions therefrom, which is altogether owing to their being Strangers to that Part of our Constitu-

tion and History ; which, with Respect to the Generality, is in this Age allowed to be wrapt up in Oblivion : We therefore beg Leave to offer the following short Account of these Books, and of this Right therein contained.

We learn from *Buchanan*, That, when Sir *James Sandilands* was sent to the Queen Regent from those who stood for the Reformation in *Scotland*, the two Points insisted on by him were, 1^{mo}, That the publick Worship should be celebrated in the Mother-tongue. 2^{do}, That the Election of Ministers should be execute by the People, according to the Practice of the Primitive Church ; which primitive Practice is sufficiently described, and made appear to have continued in the Church for above a Thousand Years, *Section* 4th throughout of the forecited Pamphlet.

Therefore in our first Book of Discipline, which was amongst the first Steps of our Reformation, as we heard, this Article is most explicitly fixed and set forth in these forecited Passages ; concerning which first Book the learned Mr. *Calderwood* observes (a), That being accommodate to the Times, and the broken Circumstances of our Church at the Reformation, on that Account we find therein-contained, not only the valuable Articles of our After-establishment, which necessarily required a perpetual Endurance in the Church, but also several Things relative to their then Infant-State, which, as Mr. *Knox* himself, one of the principal Authors of it, admits, were only intended to continue till our Reformation was further advanced ; and that the more perfect Order and State of the Church should for ever supersede the Use of them : Thus, in the Case of the Superintendent, which the Penury of Ministers in these early Times made unavoidable, since whole Countries must have lien for a long Time without the Gospel, unless this Officer had been appointed, which however was afterwards discharged when our Churches became sufficiently provided with ordi-

(a) *Calderwood's Hist.* p. 25,

ordinary Pastors, as was likewise the Case of Readers, Exhorters, and some other lesser Points: Besides that another Inconveniency attended this first Book of Discipline, *viz.* That the Matters therein-contained were handled in a Manner that was too minute and prolix (as at that Time it was unavoidable, when Men were grossly ignorant of every Thing that concerned Order and Discipline in the Church) which however had swelled it too considerably in the Bulk to be kept in Memory for an universal Execution.

For which Reasons we find, that, no further than the Assembly 1563, a Commission for the Re-examination of it was appointed, which was thereafter renewed from Time to Time; and many Diets for Consultation and Dispute anent the Articles therein-contained held and appointed from one Assembly to another (as appears from our Acts of Assembly, and Histories of that Period), till at length the second Book of Discipline was agreed to in the Assembly 1578, or 1581, when it was appointed to be registrate, which was the 41st Assembly of our Church (there being at that Time always two Assemblies in the Year.) Wherefore we observe,

1mo, That these Articles of our Discipline were thus in Agitation from our Reformation for near Forty Assemblies of our Church: Besides, it is worth Notice, That *Anno* 1577, before they enacted this second Book, which was then much ripened by Conference and Dispute, they appointed a Fast throughout the Nation for eight Days together, from Sabbath to Sabbath, every Day between being a Fast-Day, for Light and Direction in that Matter; which, as it shows their exceeding great Anxiety and Caution thereanent, so it is a sufficient Caveat to the subsequent Ages of our Church, whereby to prevent their making light of it, or of the Articles therein-contained.

2do, From what is above set forth, and particularly from that forecited Act of Assembly 1578, in which they affirm, That they had imployed their Wit and Study, and drawn out of the pure Fountains of God's

Word such a Discipline as was meet to remain in the Church; It plainly appears, that our Church having thus dropt these Articles, which were only temporary and relative to her Infant-State, she has in this second Book fixed and pointed out these Articles of our Discipline, which she meant to be unalterable, as intended to remain perpetually in the Church; and so it must necessarily be, when taken out of the pure Fountains of God's Word, as she thus expressly affirms: And on this very Account it is that,

310, She thus affirms the Books of Discipline, and the Articles thereof, to be perpetual and unalterable, in Opposition to what she in these Books (when speaking of the Judicatories of the Church, and their Jurisdiction) calls the *το πρίπον* of the Kirk, whereby is meant these Constitutions which concern the external Order of Administration, as of Word and Sacraments, or of the Distribution of Justice; in which, having no Prescript from the Word, they are left to the Dictates of sound Reason, and the wise Constitutions of other Civil Courts; but on that Account subject to be altered or innovate from Time to Time, as Circumstances require.

410, That, as the second Book of Discipline is much contracted, and the Articles therein shortly and more generally exprest, whereby the Whole is scarce the Half of the Bulk of the first Book; it follows, from the most certain Rules in explaining Laws, that, where any particular Point is exprest more generally or doubtfully in the second Book, such general or doubtful Expression must be explained from the first Book, in case the same Subject happens to be there treated in a Manner that is more special and particular. And from thence 'tis plain, That, as the Order of Election is only hinted in the general in the second Book, which, at the same Time, is so specially and particularly set forth in the first Book; the one must be allowed to supply the other, by this Rule, so as that neither of them can differ in that Point.

510, Altho' we grant, That, in case there were any Difference betwixt these two Books, the last must derogate from the first, because posterior to it; yet, as the first was thus the Discipline of our Church, by the Authority of both Church and State, as above set forth; so the second is plainly in the Case of a corrective Law with Respect to it, which therefore, by the Rules of Law, stands entitled to a most strict Interpretation: For this Reason, That, as former Laws are by the Law presumed to be the Result of much Judgment and Deliberation, they are, on that Account, everywhere understood to be as little receded from as possible; so that no Presumption of Change of Mind is to be admitted, unless it is most clearly instructed.

610, That, as the first Book of Discipline was thus the Discipline of our Church, without being at any Time rescinded or repealed; so it follows, that, notwithstanding of the second Book, the first continues to be a Rule of our Church, at least supplementary and explanatory of the second. Thus, in the Act of Assembly, 10th December, 1638, intituled, *Act declaring the Five Articles of Perth to have been abjured by the National Covenant*, we find our Church herself appealing three several Times to the first Book of Discipline, as in Page 37, 38, 39. of that Act, whereby to prove that these Articles were contrary to the Discipline of this Church, and therefore abjured by the National Covenant. Now, that the second Book of Discipline was long enacted before these Articles of *Perth* were imposed, and yet that the first Book, as well as the second, is thus adduced to disprove them, plainly shews, that both are still the Discipline of this Church.

710, The only Disagreement we have heard alleged in these Books, is, That the second Book enjoins the Imposition of Hands in Ordination, while the first has this Assertion anent it, *For albeit the Apostles used Imposition of Hands, yet, seeing the Miracle is ceased, the using of the Ceremony we judge not necessary.*

sary. Concerning which, we observe, That, as their Assertion amounts to no more than a Judgment that the Thing is not necessary, and therefore indifferent; so the Reason they give for it is certain, namely, That, by the Imposition of the Apostles Hands, the Holy Ghost, with his extraordinary Gifts and Graces, was immediately conferred.

And in like Manner, we find from *James 5. 14.* That, by anointing the Sick with Oil in the Name of the Lord, joined with Prayer, a miraculous Cure was performed. Now, it is plain that this last is altogether neglected by the Church, for no other Reason, but that the Miracle which attended it has ceased. And, since the Cases are thus parallel, no Reason can be assigned, why the Ceremony should not cease in the one Case, as well as the other; excepting only, that Imposition of Hands continued to be used in the Church even after the Miracle ceased, and therefore ought still to continue; which by no Means proves the Necessity of it, but only that the Matter is indifferent; Especially, when it is considered, that the material Part of Ordination, and even the very Essence of it, consists in the Candidate's being by Prayer solemnly devoted and separated to the holy Office of the Ministry; The Imposition of Hands is only a Ceremony that seems somewhat to increase the Solemnity.

But, as we by no Means dispute the Usage, so we are persuaded that all our Reformers intended by that Assertion, was only to justify the Mission of some most eminent Ministers then in our Church, who, by the extraordinary Grace, Gifts, and Success with which they were attended, plainly shewed they were called of God, even altho' they had not received Imposition of Hands. And so the Whole amounts to this, and no more, that the first of these Books affirms Imposition of Hands to be indifferent, and the second appoints it to be used notwithstanding; and so amounts only to the Appearance of a Difference, while it is really nothing at all, since they nowhere affirm the Usage to be anywise unlawful.

Suo, It is to be noticed as to these Books, That altho' they do ascribe Election in the strongest and plainest Terms to the People; yet, because elsewhere through these Books, Election, and Words of that Import, appear sometimes to be ascribed to the Ministry, we observe, That in these early Times of our Church there was no such Thing as Probationers, or Men declared qualified for the Ministry, but Ministers were then taken out of the common Rank of Men, wherever they were found enriched with Gifts suitable for Edification: And therefore in every Settlement there was a twofold Election, *viz.* 1^{mo}, Of a Man to the Ministry, which belonged altogether to the Presbytery. 2^{do}, His Election to a particular Parish, which was therefore peculiar to the People of that Parish.

And both these Elections being thus necessarily finished in the self-same Settlement, which are now so very separate and distinct; it is therefore evident, that as, on the one Hand, where these Books do so distinctly affirm, *That it appertaineth to the People of every several Congregation to elect their own Pastors, and that their Votes and Suffrages in that Election must with all Care be reserved to them*, there the People's Election, and no other, can be meant; So, on the other Hand, where any Terms importing Election is affirmed of the Ministry, there must as necessarily be meant the Election of the Candidate to the Ministry, and not to a particular Parish, which is thus so expressly and distinctly affirmed to belong to the People of that Parish.

And, because the First of these was no other than the Presbytery's Approbation of the Candidate's Gifts and Qualifications for the Ministry; and the Second an Approbation by the Parish of these very Gifts as Sufficient and suitable for their Edification in Particular, from a Harmony of both which the Settlement could only be compleated; therefore they both upon the Matter amount to no more than that necessary Consent of Parish and Presbytery in every Election, which is pointed out from Page 8. of the forecited Pamphlet; and
from

from this most obvious and necessary Distinction, that seeming Opposition in the Terms is plainly removed. Besides, that it appears from the Acts of Parliament 1640 (as they are stated from Page 21. to 24. of the fore-cited Pamphlet) That, as the Legislature is in these Acts restoring Presbyteries to their ancient Right of Settlement, which had been interrupted by the preceeding Episcopacy; so this very Restitution of Presbytery is everywhere in these Acts affected with an express *Salvo* of the Interest of the Parishes to be settled on the Suit and Calling of the Congregation, conform to the Acts and Practice of this Church since the Reformation. Wherefore, altho' these Acts were rescinded at the Restoration; yet, as they are still an undeniable Evidence of Fact, so they plainly prove, that both the Acts and Practice of our Church were from the Reformation uniform to have Parishes settled on the Suit and Calling of the Congregation; and therefore a full Proof that our Books of Discipline can by no means differ in that Point.

But then we would have it remembered, That, as we already agreed to wave our insisting on the positive Part of Election in Favours of the Congregation, altho' it is sufficiently evident from what is above set forth, that this same belonged to them; Yet, that we have at present confined our Plea to this, That no Man be thrust upon a Parish against their Will, it is sufficient for our Purpose that everywhere, through both first and second Books of Discipline, this necessary Consent of the People of a Parish in the Settlement of their Minister, is expressly affirmed to them, even to the utmost Extent that Words can make it.

SECTION V.

WE are now to consider the third Bond above-mentioned, *viz.* our National Covenant (for we do not here insist on our Solemn League, because some take the Freedom to dispute it) but our National Covenant, more

more frequently called our Confession of Faith, or our General Confession, was never disputed; not even under Episcopacy itself, as we shall hereafter notice; and which National Oath was by no means the Deed of our Church, but proceeded directly from King *James the 6th* and his Council; however it had our Church's Approbation by their Act of Assembly 1581, and was thereafter sworn to by all Ranks in the Nation; and was again, in the Year 1590, together with a general Bond for Maintenance of the true Religion, of new subscribed, and sworn to by Persons of all Ranks, by another Ordinance of Council; and again renewed and sworn to in the Year 1638, and 1639. Now, we still consider this National Covenant as a Civil Ratification of the Doctrine and Discipline of our Church; for, not only that it proceeded thus directly from the State, but also it appears from what is above set forth, and from the foresaid Bond for Maintenance of the same true Religion, as well as the several Acts of Parliament during that Period, that our Reformation, being with so much Labour and Anxiety during these first 20 Years of our Church, now effectually established from the pure Fountains of God's Word, as above observed, became the Object of the Plots and Machinations of the Church of *Rome*, and the Civil Government itself no less, because of their Countenance and Adherence thereto. Wherefore this Bond was plainly intended by the State, as the strongest Civil Security of both, against the common Enemy, that could be contrived, by abjuring *nomination* the Errors and Corruptions of that *Romish* Church, and binding our whole Nation, as such, to the reformed Doctrine and Discipline then established, by the strong Tie of a National Oath; and to which the above Association-bond was subjoined, not only for Maintenance and Security of the same True Religion then established, but also of his Majesty's Person and Government, thus necessarily connected therewith, against all Attempts to the Prejudice of either. Whence 'tis evident that this Oath of our National Covenant was plainly a Civil Oath, as it was imposed and enacted

by the Civil Authority, for their own Security, as well as the Reformation then attained; and the last as the most probable Support, under God, of the first.

In this National Covenant or Confession of Faith, the Discipline of our Church is expressly sworn to, in these Words; *Promising and swearing (by the great Name of the Lord our God) that we shall continue in the Obedience of the Doctrine and Discipline of this Kirk; and shall defend the same, according to our Vocation and Power, all the Days of our Lives, under the Pains contained in the Law, and Danger of both Body and Soul in the Day of God's fearful Judgment.* And in the subsequent Clause of that same Oath, it is expressed thus; *We therefore willing to take away all Suspicion of Hypocrisy, &c. Protest and call the Searcher of all Hearts for Witness, that our Minds and Hearts do fully agree with this our Confession, Promise Oath and Subscription: So that we are not moved with any worldly Respect, but are perswaded only in our Conscience, through the Knowledge and Love of God's true Religion printed in our Hearts by the Holy Spirit, as we shall answer to him in that Day when the Secrets of Hearts shall be disclosed.*

This Argument, viz. That the Books of Discipline were sworn to in our National Covenant, was used against King James the 6th, when he introduced Episcopacy and the five Articles of Perth into our Church, but never received an Answer; nor was it possible it should: For, as it is certain these two Books were the Discipline of our Church, which at that Time had none other that could be the Subject of such National Ratification; but especially the second Book, which, as it is *per se* sufficient for our present Question, so it is the very Discipline, anent the Ratification whereof our Church had been so exceeding earnest with the State; as appears from the Acts above-cited: Besides, it is already made appear, that this second Book consists of these very Articles of our Discipline, which our Church herself affirms were intended to remain perpetually in the Church, as being taken from the Word of God;

and on that very Account they are, and must be; the most proper Subject of such National Ratification, not exclusive of the first Book, in so far as it is supplementary and explanatory of the other, as above set forth.

But, to put this Question beyond Dispute, we find our Church herself expressly affirming, That this second Book of Discipline was sworn to in our National Covenant, in that Act of Assembly, 8th December 1638, intituled, *Act declaring Episcopacy to have been abjured by the Confession of Faith* (or National Covenant;) In which Act, one of the great Evidences they insist upon is, That the Books of Discipline, whereby Presbytery is established in Opposition to Episcopacy, were sworn to in that Covenant; and thence concluded that Episcopacy was thereby plainly abjured.

Thus in the very first Parag. of that Act they affirm in these Words, *That the Discipline and Government of the Kirk prescribed according to God's Word, in the Book of Policy and Discipline, agreed upon in the Assembly 1578, insert in the Register 1581, established by the Acts of Assembly, by the Confession of Faith (or National Covenant;) sworn and subscribed at the Direction of the Assembly, and by continual Practice of this Kirk:* Where they affirm, 1mo, That the Articles of our Discipline, contained in the same Book, were prescribed according to the Word of God. 2do, That this Book was, not only ratified by the Acts of Assembly, but was also sworn to in our Confession of Faith, or National Covenant, by the Authority of the Church as well as the State. 3tio, That it was also ratified by the continual Practice of the Kirk preceeding that Time, viz. 1638.

And in that same Act, Page 31st, we are told, That when the Assembly 1581 appointed the Registration of the Book of Discipline, they at the same Time enacted their Approbation of the National Covenant, whereby the latter is in the Record immediately subjoined to that Book of Discipline, as a National Ratification of it; And, having in that 31st Page,

Parag 2, 3, 4, and 5. recited these two Acts relative to our Book of Discipline and National Covenant, in the End of the said 5th Parag. they assert in these Words, *wherein that Discipline is sworn to*: In which they expressly affirm, That the second Book of Discipline was sworn to in the National Covenant; and thence contend, That Episcopacy was by that Means abjured.

And, in the subsequent Act, dated the 17th December, 1638, they express themselves thus, *Remembring also that they stand obliged, by their solemn Oath and Covenant with God, to return to the Doctrine and Discipline of this Kirk, as it was professed 1580, 1581, 1590, 1591, which in the Book of Policy, registrate in the Books of Assembly 1581, and ordained to be subscribed 1590, 1591, is particularly express, &c.* In this last Act our Church expressly affirms, that the Discipline sworn to in our National Covenant, was the Articles contained in our second Book of Discipline, as the same was registrate in the 1581, and subscribed 1590, and 1591, to the Obedience of which they were obliged to return from the Necessity of that same Oath.

And with Respect to the first Book of Discipline, as we observed before in that other subsequent Act, 10th December 1638, intituled, *Act declaring the Five Articles of Perth to have been abjured by the said National Covenant*; We find the first Book of Discipline three several Times adduced, whereby to prove that these Articles were contrary to the Discipline of this Church, and therefore abjured by the National Covenant.

From the Whole we observe, That the Assembly 1638, considering how much the Government and Discipline of our Church had been defaced and obstructed by the preceeding Period of Episcopacy, they judged themselves necessitate, not only to these new Declarations for ascertaining their former Principles, but also to renew the same National Covenant for a further Security of them; which was accordingly execute

Anno

Anno 1638, and 1639: So we no where find any Objection that ever was offered against this Oath, till in the subsequent Episcopacy after the Restoration, when this Explanation of the Assembly 1638 (whereby Episcopacy is thus declared to have been abjured by this our National Covenant) was condemned, altho' the Oath itself was even then justified.

But then, as this is no Argument in the Mouth of of any Presbyterian, it is equally ineffectual with respect to all others, when it is considered, that, as in our National Covenant the Doctrine and Discipline of our Church is thus expressly sworn to, in Terms the most awful and strong that could be contrived; so it is in like Manner evident, that our Church herself could only point out and declare such her own Discipline, which in Fact she did in this Assembly 1638, with the greatest Harmony and Unanimity that we read of, as appears from the last Paragraph of the fore-said Act, 8th *December* that Year. Besides, as we already observed, our Church really had no other Discipline, which could be the Subject of that Oath; so that, even without this explicate Declaration, such must have been the Discipline sworn to.

But further, even when Episcopacy was thus refused to have been abjured by our National Covenant, that Assertion was not so much maintained by denying that our Books of Discipline were therein sworn to, which could never be denied with any Colour, as by alledging that the then Episcopacy was not inconsistent with the Books of Discipline, nor any other Part of that National Oath; because, as it then contained so very little of a complete Episcopacy, it seem'd to amount to no more than a continuing the Office of the Superintendent, mentioned in these very Books, with a perpetual Moderatorship, or Precedency in Ecclesiastick Courts, which even belonged to the Superintendent himself. So that everywhere it appears this our National Oath, as ratifying our Books of Discipline, was a Point never disputed with us, nay not under Episcopacy itself. And, even admitting it had been
so

so disputed, yet it concludes nothing with any Presbyterian against the explicate Declarations of our Church in these Acts. From which we therefore conclude,

1^{mo}, That altho' the second Book of our Discipline is everywhere in these Acts principally pointed at, as the Discipline of our Church, yet it is by no Means exclusive of the first Book, which is thus also in the same Manner adduced, as subsidiary thereto, with respect to such Points as are not contained in the second. Whence it follows, that the first Book, as well as the second, continues to be the Discipline of this Church, in so far as it is supplementary and explanatory thereof, as by these necessary Rules already mentioned it was really impossible it should be otherwise.

2^{do}, As by these Acts it is plainly become *res judicata* with our Church, that both these Books were sworn to in our National Covenant; (tho' either of them being sworn to is sufficient for our Purpose) so we thence prove the Consent of the People of a Parish in the Election of their Pastor to have been the Subject of that Oath, in the same very Manner that our Church proves Episcopacy, and the five Articles of *Pertb*, to have been thereby abjured; and even with greater Evidence, as our Assertion is yet more explicitly set forth in these Books than the other.

But, because some in this Age take the Liberty to dispute the Obligation of National Oaths upon Posterity, alledging, That the Oath of the Father cannot oblige the Son; We answer, That, altho' we grant that Alledgance, yet it is a quite different Question, Whether a Nation, as such, stand bound by their Oaths and Deeds? For it is obvious, that so long as it is the same Nation, it is plainly in the Case of a Man's own Oath, binding himself, which cannot be disputed; and upon the Faith of this Principle, all publick Deeds, as well as Oaths, do depend, by binding the Nation, after the whole Race of Contracters are dead, as effectually as before. But, we forbear to pursue the Question further in this Shape, because we think it a
Point

Point beyond all Dispute, when the Case of the *Gibeonites* is considered, as we have it, *Joshua* 9. 3, — 27. compared with *2 Sam.* 21. 1, — 15. where we find, that *Joshua* and the People of *Israel* had sworn to preserve the *Gibeonites*, while they destroyed the other Nations of *Canaan*; and, because *Saul*, about 400 Years thereafter, violate that Oath by attempting their Destruction, God plagued *Israel* in the Reign of *David* with three Years Famine: And, when they enquired the Lord anent the Famine, they were told it was because of *Saul's* Attempt to destroy the *Gibeonites*; whose Satisfaction being thereupon consulted, seven Men of the House of *Saul* were hanged up before the Lord, upon which we are told God was intreated for the Land.

As to which Passage, we beg Leave to observe, *1^{mo}*, That, as Oaths by Princes to their Subjects, and of Subjects to Princes, relative to publick Administration, are of the Nature of Contracts, containing a perpetual Series of mutual and reciprocal Prestations; so they are, and must be, on that Account explained by the necessary Rules of Covenants and Conventions; since Oaths can never void the unalterable Order and Nature of Things, as the Author of Nature has established them. But, on the other Hand, National Grants in Favours of a Church, or any other Society or Person, being ratified by National Oaths, are of the Nature of irrevocable Deeds or Declarations; whereby a *jus quesitum* or Right is created, which cannot be hurt or violate in any Time coming, without a National Sin; as is plain from this Instance of the *Gibeonites*. And, as this Question is relative to the Moral Law, which is of eternal and perpetual Obligation; so it is impossible there can be any Difference betwixt their Dispensation and ours in that Point: Nor, for the same Reason, can this Bond admit of any other possible Exception, but that the Subject-Matter of the Oath is evidently a Sin.

2^{do}, That, as by this Oath the *Gibeonites* thus evidently obtained a *jus quesitum* for their Lives, which could

could by no Means be violate, even by a subsequent Generation, without a National Sin; we thence must be allowed to reason, That, even supposing there was not the least Scripture-Evidence for the Point in Question; in which Case, it must be granted, that it was free for our Church and State at the Reformation, to give the People of *Scotland* a Consent in the Election of their own Ministers; since, where the Scripture is out of the Question, it is plain they might have given it to whom they would, without hurting any Law of God or Man: And, therefore, even supposing our Reformers to have been in a Mistake in founding that Right on the Word of God; yet, as their Mistake could not be greater than that of *Josua's*, and the People of *Israel*, with Respect to the *Gibeonites*, who came with a Complication of Lies in their Mouth to induce them to that Contract; so our Church, having once affirmed this Right, and the State thus ratifying that Assignment by the Oath of God, it plainly follows, that the People of *Scotland* have thereby obtained a *jus quesitum* therein, which, in the same Manner as that of the *Gibeonites*, cannot be violate, even by a subsequent Generation, without a National Sin.

Altho' this Conclusion is strong, yet we can by no Means avoid it, when our Church herself has thus provided us with the Argument; with this Difference, That, as she pled it against the State for violating the Book of Discipline, thus sworn to, by introducing an Episcopacy contrary to the Form of Government thereby established; So the Argument is by far stronger with us, when we are thus obliged to use it against our Church herself for Violation of that same Book of her Discipline, which she herself thus affirms to be ratified by the Oath of God.

But, because we are afraid that the Strength of this Conclusion, and of others after-mentioned, may fall too severely upon these Members of the late Assembly who voted for this Act, with an Effect that is by no Means our Intention; therefore, from the Brotherly Love which we bear to them, we hereby declare, That

we have the Charity to believe, with respect to all of them, that had they sufficiently considered these Articles of our Constitution, and the Manner of their Ratification above set forth, they had never enacted any such Rule; which was truly the Effect of precipitant Inadvertancy: But then, as this concludes for a speedy Repeal of this Act, so it must fall upon every subsequent Assembly that shall refuse it, with whom we leave this our Apology for the Precipitancy of the last.

SECTION VI.

THE 4th Bond we come to consider, is that of the Laws; anent which it is evident, that, as the National Covenant was, in the Year 1590, for the second Time sworn through the Nation, by Ordinance of Council, together with a general Bond for Maintenance of the true Religion, as we already noticed; whereby the Nation became thus bound to the Doctrine and Discipline then established, in a Manner so strong, as we just now observed: So it became unavoidably consequent, that the State should grant what further Parliamentary Ratification of either, that should be judged proper.

And accordingly, *Anno 1592*, upon our Church's Application to the Parliament, craving expressly a Ratification of her Discipline, with an Abrogation of all former Laws in Prejudice thereof, we find her Demand granted by the 114th Act of that same Parliament, Intituled, *Ratification of the Liberties of the true Kirk, of General and Synodical Assemblies, of Presbyteries, of Discipline, &c.* wherein it is declared to be the Duty of Presbyteries to see the *Discipline entertained*: And having ratified the whole Jurisdictions of our Church, with their several Jurisdictions, it is thereafter affirmed in these Words, *And declares and declares the saids Assemblies, Presbyteries and Sessions, Jurisdiction and Discipline thereof forever said, to be in all Time coming, most just, good and*

godly in itself, notwithstanding of whatsoever Statutes, Acts, Canons, Civil or Municipal Laws made in the contrary; to which, and every one of them, this Presents shall make expresse Derogation: And so proceeds to abrogate several Laws made in Prejudice thereof.

Now, as we have in the preceeding Section made appear, that by Discipline, as relative to our Church in the National Covenant, is and must be understood these two Books of that Name, but especially the second; so the same very Arguments do, in like Manner, prove, that by our Discipline in this Act 1592, must necessarily be meant these same very Books of our Discipline; since, if that is not the Meaning, it is plain this Act can have no Meaning at all, because, as we already shewed, there was no other Discipline then in our Church which could be the Subject of National Ratification.

But further on this Head, as we find the most of the statutory Part of this Act of Parliament *verbatim* transcribed from our second Book of Discipline; so we also find our Church herself, in that forecited Act of Assembly, December 8th 1638, Paragraph 2d of the 34th Page, setting forth, That when, in Anno 1592, she applied to the Parliament for a Ratification of that Discipline whereof she had been in the Practice, the same was granted in this very Act of Parliament 1592; anent which she expressly affirms in that same Paragraph of her Act 1638, *That the Liberty, Discipline and Jurisdiction of our Church was in this Act of Parliament 1592 largely ratified, as the same was used and exercised within this Realm.*

Now, as to this Discipline used and exercised within this Realm, the Parliamentary Ratification whereof was thus asked and obtained; We are not only told, in the 1st Paragraph of the same Act 8th December 1638, that this second Book contained the Discipline whereof our Church had been in the continual Practice; but also, in that other Act of the 10th of the same Month, our Church uses the same very Reasoning.

ing, with respect to our first Book of Discipline, which in this Act she uses with respect to the second; it follows, that these two Books, thus containing the Discipline which are used and exercised within this Realm, are therefore that very Discipline which our Church here affirms was ratified by this Act of Parliament 1592; especially that, by these forecited Acts of the Parliament 1640, we have the Doctrine of both these Books (so far as concerns the Point in question) plainly comprehended and asserted to have been the Practice of our Church from the Reformation to that Time; namely, to have Parishes settled on the Suit and Calling of the Congregation.

Again, in the Act of Parliament 1690, establishing Presbyterian Church-government at the Revolution, which was in Consequence of our Claim of Right, containing the Articles of our Surrender of the Crown to King *William*, we find, not only the Doctrine, Discipline and Government of this our Church established, but also the forecited Act 1592 expressly *ratified, revived, renewed and confirmed, in the whole Heads thereof*, except what relates to Patronages.

And further, the Act of the Union-Parliament 1707, establishing the Doctrine, Discipline and Government of our Church, expressly ratifies, approves, and for ever confirms, the said Act 1690, with the hail other Acts relative thereto, in Prosecution of the said Claim of Right: And further, *Statutes and Ordains, this Act 1707 itself, with the Establishment therein contained, to be held and observed as a fundamental and essential Condition of the Union of the two Kingdoms in all Time coming.*

Wherefore, as we thus have our Church herself affirming, That the Books of Discipline were ratified by the forecited Act of Parliament 1592 (for altho' the Thing is most evident, yet, that we are reasoning with our Church, we still chuse to found upon her own Acknowledgment) and that this Act 1592 is also ratified by the Act of Parliament 1690, and again this Act 1690 ratified by the Act of the Union-Parliament,

ment, and therein declared to be an *unalterable* and *essential Condition* of that Treaty; and further, considering that it is an evident Principle in Law, that the self-same Degree of Authority is necessary to destroy a Right which was necessary to its Constitution, from the common Maxim, *Nil tam naturale quam eo modo quidque dissolvi quo colligatum est*; It thence follows, that as this Right is established by the Authority of both Church and State, a simple Act of Assembly, without the Consent of the State, can never destroy what is thus the Subject of so much Civil Ratification.

It is indeed granted, that where the Right ratified is evidently contrary to the Word of God; in that Case both Church and State ought to concur in a speedy Subversion of it, by reforming the Point, since human Laws can never bind the Consciences of Men in Contradiction to what is divine. But, on the other Hand, where that cannot be pretended, as in the present Question, in which we do still contend with our Church, that it is expressly contained in the Scripture: And tho' some take the Assurance to deny our Assertion; yet none ever did or can pretend that it is contrary to Scripture. Wherefore, even admitting their Allegation, That there is no Scripture-Evidence of it; yet, as in the preceeding Section we made appear, that this Right is even in that very Case still the proper Subject of the National Oath; so it is and must be, for the same Reason, the true and proper Subject of all this Parliamentary Ratification in Consequence of that Oath; and even the rather so, when the Scripture is thus out of the Question: For, as in that Case the Right becomes Civil, so it is on that Account with greater Propriety the Object of such Civil Ratification in favours of the Subject, and without the Reach of such Ecclesiastick Disposal as is pretended by this Act.

Upon the whole we conclude, That, as we just now observed, it was the most evident and unavoidable Duty of a Nation

Nation thus bound to the Doctrine and Discipline of our Church by the Oath of God, in Terms so awful and strong. and so often repeated through the Land, to provide for the Implement of that Oath, by the strongest Civil Security that could be thought of: So we find the same, and consequently this Article thereof now in Question, not only established by the Act 1690, which was in Prosecution of our Claim of Right at the Revolution, as the Legislature in the forecited Union-Act expressly asserts; but also, in that same Union-Act itself, it is thus fixed as an unalterable and essential Condition of that Treaty; whereby it is become such an essential and unalterable Part of our present Establishment, that it is for ever incapable of being hurt or prejudged in any Sort, without shaking the very Foundations of the State and Civil Constitution, as well as that of our Church; which therefore calls for a present and speedy Repeal of this our Act of Assembly.

Now, even admitting these very Ratifications were *de facto* overturned by a proper Authority (which we are sure our Church is not) yet, as they are thus obviously consequent of our Nations being previously bound thereto, by this their solemn Oath; it is plain even that Alteration could extend no further than *de facto* to create an Interim-impediment or Interruption of the Implement of that Oath. But as to the Obligation thence arising, which we have already shewed to be perpetual, and therefore incapable of being either interrupted, hurt or diminished in any Sort; on that Account it constantly holds and retains the present as well as the subsequent Generations, under an unavoidable Necessity, not only of restoring all such Ratification, but also of exerting their utmost Endeavours to compass every Thing else that may be thought needful for securing the Implement of that awful Tie.

Wherefore if it should be here alledged, That the Rule in the Act 1690, concerning Patronage, must be

be an Interruption of this Chain of Ratification, so far as concerns the Point in Question ; We answer, The Allegation plainly amounts to this and no more, that either this Act 1690 must contain the Consent we plead for, or otherwise that Parliament must be involved in the Breach of our National Oath : But, as the last is by no Manner of Means to be admitted, in Case the Terms of the Act will at all allow of the first, so we hope in a little to make appear, that, not only the Words of the Act will admit of a Construction in favours of this Right, but even that they do most plainly contain it,

And shall only in the mean Time observe, That, as the Rule in that Act is so exceeding general, so the most special and particular Part of it is, that the Settlement of Parishes is thereby wholly committed to the Church, by whose Judgment and Determination all Settlements on that Act are to be for ever ordered and concluded. Now, that it is the Principles of our Church, to which the Nation is sworn in that Oath ; the State might seem sufficiently exonerated in this Matter, by committing this general Rule, by no Means exclusive of these Principles, wholly to the Church herself, from whom an exact Observance of her own Principles could by no Means be doubted, as from Persons bound thereto by that same Oath, as well as many other Ties.

Nay, further, we contend, as from Page 47 to 56 of the forecited Pamphlet it is evinced and made appear, That even the Act 10mo *Anne*, restoring Patronage, admits of this Consent of the Parish, as from the foresaid Union-Act it was necessary it should. The only Clause of that Patronage-Act relative to this Question stands thus ; “ That the Presbytery of the Bounds is thereby
“ appointed to receive and admit such qualified Per-
“ son or Minister presented by the Patron, in the same
“ Manner as Persons or Ministers presented before the
“ making of this Act, ought to have been admitted.” Now, since it is most certainly true, as we have already made appear, that the only Manner of Admission
preceed,

preceeding that Act, was by the Consent of Parish and Presbytery, as founded in our Books of Discipline, ratified as above ; it thence follows, that such, and such only, must be the very Manner of Admission mentioned in this Patronage-Act ; since it is plain there was no other Manner of Admission ever known in this Church ; and which appears from further Reasons and Topicks in that forecited Passage of the said Pamphlet.

Wherefore, to conclude this Section, we observe, That from all this Ratification, both by our Church and State, of the People's Right to chuse their own Pastor, it is more than evident, that this Concession was by no Means intended to gratify the Caprice of a foolish Mob, as the People are at this Day represented ; but was truly the grave and deliberate Resolution of both Church and State from the Reformation, as a Principle which they believed to be founded on the Word of God, and therefore established it as above.

SECTION VII.

HAVING thus far considered the Books of Discipline, with the Civil Ratifications thereof, from the Laws as well as from the National Oath, the last of which is evidently a Civil Ratification as well as the first, as was observed ; We shall in this Section proceed to consider the Question, How all this Ratification of the present Point, anent the People's Consent in the Election of their Pastor, could be meant by the State while they still retained the Patronage upon the Church, as they did from the Reformation to the 1649?

Anent which we do acknowledge, that the Patronage was so retained ; but then we say, That it always was from the Reformation, and is still, expressly affected with the necessary Consent of both Parish and Presbytery, as is made appear from Page 47 to 56 of the forecited Pamphlet ; and of which the National Oath, and Acts of Parliament now recited, are yet a further Evidence ; But, because the Explication of this seeming In-

consistency

consistency is somewhat involved in the History of our Church-Benefices at the Reformation, we beg Leave therefore to offer the following short Account of them ;

It is evident, that at the Reformation our Popish Church was posselt of the one Half of the Rent of the Nation, betwixt their Tiends, their temporal Lands, and other Rights; and accordingly we find them paying one Half of the Land-Tax of the Kingdom (*a*). Now, as this Provision was most extravagant for any Church; so the same was as generously refused by our Reformers, who claimed nothing more of it than a reasonable Maintenance for themselves, their Schools and Universities.

It became consequent of this Refusal, that, by the necessary Effect of the Canon-Law, these Benefices fell back into the Hands of the Patrons : And the Crown, being, not only intitled to the Patronage of such Benefices as had been erected by it, but also by Law coming in Place of the Pope upon the Reformation, claimed the Patronage of all these Benefices which were at his Disposol ; while there were but few in the Nation of any Value, which were not of that Character : Wherefore, upon the Refusal of our Reformers, we find these Benefices were gifted to Laicks ; many of which were thereafter erected into temporal Lordships and Baronies ; consisting not only in the Lands of Abbots, Priors, and other beneficed Persons, but also in the Patronage of other lesser Benefices and Churches, which in Time of Popery had been mortified to the Abbacy ; and whereof these Lords of Erection, thus by Grant from the Crown becoming Patrons, acquired Right to the Tiends of other Mens Lands, payable to these Abbacies or other Benefices, which they could only claim *jure patronatus*, by the same Effect of the Canon-Law : But of the other Benefices through the Nation, which were not thus erected, the Crown still retained the Patronage ; and to all these Benefices the Persons presented were still Laicks, by which the reformed Church was really separated from them.

Wherefore

(a) See Sir George Mackenzie's Observ. on Act 277, Par. 15. &c. V.

Wherefore one third Part of the whole Benefices was appointed to be uplifted from these Laick Titulars, and counted for in Exchequer, as a Fund for the Maintenance of the Ministers of our Reformed Kirk, and for the Support of the Imperial Dignity of the Crown, at that Time miserably impoverish'd, first by this extensive Possession of our Popish Clergy before the Reformation, and no less thereafter by this extravagant Alienation of these Riches to the Nobility and great Men.

The unhappy Circumstances in which Queen *Mary* found herself at the Reformation, induced her to that extravagant Alienation of the Benefices, without minding either the Provision of the Church, or the Necessities of the State; which even obliged our Reformers to complain of such Donatives, in that themselves, their Schools and Universities, were neglected, who ought to have been first provided out of the Funds *ab origine* mortified for such Purposes. And, seeing this subsequent Remedy of the Thirds of Benefices did but ill answer the End, being levied from Persons so very disinclined to pay (as appears from *Act 121. Parl. 12. King James VI.* where we are told, That Ministers were in many Places forced to leave their Charges for Want of Maintenance) our Church became often necessitate to renew her Complaints, and earnest Entreaties with the Crown, either to remove the Patronages, by which they might have direct Access to the Tiends and Benefices, or, at least, that Ministers, and not Laicks, might be presented to the Benefices in Time coming.

Altho' the first of these could never be obtained, yet the last was granted as to some of the lesser unereccted Benefices: However, notwithstanding of these, and other Means attempted by the State for the Provision of Ministers, they were still, as to the Generality of them, but ill-provided, till King *Charles I.* by his Decrees-arbitral *Anno 1629.* not only established the Ministers Stipends upon the Tiends, as they now stand, but also effectually finished all Questions anent the Benefices,

which were now for ever secured to the Titulars of them, with a great many Grievances relative to Tiends thereby adjusted.

From this short Account it is plain, that the Benefices thus by Law falling into the Hands of the Patrons, the Patronage became the very legal Title by which they were thus possess'd and disposed of; for which Reason, altho' the State could never, on any Account, be prevailed with to quit the Patronage, yet it did by no Means hinder their yielding to any Rules the Church thought fit to appoint anent Settlement of Ministers, as in Fact they did, in Manner above set forth: And therefore we find, that when the Assembly 1565 offered their Complaint to Queen *Mary* against the Patronage, and these extravagant Alienations of Benefices, insomuch that the Hospital-Funds themselves had been misapplied to the Hurt of the Poor; and craving a Provision for Schools, &c. it was answered, *That her Majesty thinks it nowise reasonable that she should defraud herself of so great a Part of the Patrimony of the Crown, as to put the Patronage of Benefices forth of her Hand, &c. Nevertheless she is satisfied, that, Consideration being had of her own Necessity, and what may be sufficient for Sustentation of the Ministry, a special Assignment be made to them, viz. Schools in Places most commodious, &c.*

So that, tho' our Church often repeated these her Complaints against the Patronage, as an Antichristian Usurpation, flowing allendarly from the Canon-Law; yet, because it was so inseparably connected with these lucrative Acquisitions of so great Extent through the Nation, it became a Moriel too sweet to be parted with at any Rate; but, these being secure, any Thing else was readily granted: Insomuch, that, altho' the several Articles of our Discipline were disputed, not only by our Church amongst themselves, but also by Commissioners from the State, appointed from Time to Time to confer with our Church on these Heads; yet we find from these Conferences, that this Article of the

the People's Consent, was a Point neither doubted nor disputed ; whence it plainly appears, that the Patronage retained was by no Means intended to over-rule Settlements, but only as the legal Title whereby to possess and dispose of the Benefices as they then stood.

In Consequence whereof, we further find, that when these Benefices came thus to be effectually secured by King *Charles's* Decrees-Arbitral, as above-observed, the Parliament 1649 were induced to yield to the rescinding Patronages ; and in which Act they acknowledge every Thing which our Reformers affirmed anent them, and even found their Obligation to rescind them upon the National Oath in the same Manner that we do.

From all which it is evident, that this is the very Strength of our Argument with the State for rescinding our present Patronage-Act ; namely, That, by our very Constitution from the Reformation, this Church is incapable of a rigid Patronage, seeing all such Patronage is, by the Ratifications foresaid, expressly burdened with the Consent of the Parish and Presbytery ; by which it is become impossible for the Church of *Scotland* ever to admit more to a Patron than to repeat his Presentation, until both Parish and Presbytery are satisfied : And, altho' this renders that Part of the Right of Patrons so exceeding ineffectual, yet there is no Help for it, when the very Constitution and Establishment of both Church and State, and the Oath of God so often repeated through the Nation, thus expressly demands it : And yet, that this ineffectual and really insignificant Part of their Right creates so much Dispute and Uneasiness through this Part of the united Kingdom, calls for a Repeal of it, whereby to bring these Things to a Consistency, and quiet the Minds of the Subject.

SECTION VIII.

NOW that we have thus far fixed the People's Right to chuse their own Pastor, at least their necessary Consent in that Election ; it is Time to enquire how this Matter stands in the Act complained of, and how far the Conclusions above-mentioned affect the same.

As to which we must observe, That our Church having of late Years fallen into the Practice of violent Settlements, for which the Patronage-Act was still pled for an Excuse, altho' without just Ground, as is made appear from that forecited Page 47th of the foresaid Pamphlet, besides what is above set forth ; nay, even where the Patronage was out of the Question, the same Violence has been execute against the greatest Opposition from the Parish, which is a further Evidence, that the alledged Necessity from the Patronage-Act is but a Handle, whereby to cover our Church's Inclination to a Change in their Method of Settlement, by divesting the People of any the least Concern in them.

Therefore, altho' it is most evident, that the whole of our Conclusions fall upon the Practice itself, whereby every such Settlement is plainly a Violation of these our Standards, Oaths and Laws, and therefore evidently a Sin : Yet, that the Practice, tho' in never so many Instances of it, does by no Means amount to the Iniquity of one Law justifying that Practice, because such is, not only to establish Iniquity by Law, but is really, in this Case, a lending the most sacred Authority (for such a Church-Canon must be) whereby to justify that sinful Practice : On that Account our principal Opposition and Aversion is to the Act itself.

As to which we observe, That, altho' it is pretended, that no more is meant by it, than to revive the Rule in the Act 1690 ; yet, as we already noticed, either the Act 1690 must contain this Consent we plead for, or else that Parliament must have been thereby involved

in the Breach of our National Oath: But, as the last is by no Means to be admitted, so the first must be true, as we hope to make appear most evidently from the Act itself; which, in the only Clause of it relative to our present Question, stands thus, *Their Majesties, &c. do statute and declare, That in case of the Vacancy of any particular Church, and for supplying the same with a Minister, the Heritors of the said Parish (being Protestants) and the Elders are to name and propose the Person to the whole Congregation, to be either approved or disapproved by them; and, if they disapprove, that the Disapprovers give their Reasons, to the Effect the Affair may be cognosed upon by the Presbytery of the Bounds, at whose Judgment, and by whose Determination, the Calling and Entry of a particular Minister is to be ordered and concluded.*

From whence it is obvious,

1^{mo}, That, as we already observed, the Rule in this Act is so exceeding general, especially that it is by no Means here distinguished, whether the Disapprovers should be the Majority or Minority, or of what Kind these their Reasons ought to be, whereby neither are excluded: So it is plain, that the most special and particular Part of the Act, and for which this very giving of Reasons is thereby appointed, *viz.* to the Effect the whole Matter of Settlements may be lodged with the Presbytery, to be there ordered and concluded. But, without all Doubt, according to their own Presbyterian Principles, since it was impossible for Men who had so lately suffered for these to trespass upon them on any Account; which therefore, as the Legislature in this Act must have unavoidably expected, so it follows the same must have been really meant and intended.

2^{do}, The Parliament having, by this their Act, discharged the Exercise of the Patron's Right, does indeed give the Nomination of the Candidate to Heritors; but in what Manner, we are told in the subsequent Part of this Act, *viz.* by obliging the Patron

to sell, and the Heritors to purchase his Right: It liquidates the Price to Six hundred Merks, proportions the same on the Heritors according to their valued Rents, and grants Diligence for making that Price effectual, insomuch that these Heritors, who made Payment of that Price, do, by the very Patronage-Act *10mo Anne*, remain Patrons of their Churches; and these Patrons only are thereby restored to their Rights, who had not thus received Payment of the Price.

3^{to}, The Elders are added to the Heritors, in this Right of naming and proposing the Candidate to the Congregation: The Reason of which seems plainly, that such were provided to that Right, by the Act of Assembly 1649; which, as it was the last Rule of our Church on this Head, and on that Account here ingrossed; So it is made appear to contain this Consent of the Congregation most expressly, from Page 38 to 44 of that forecited Pamphlet.

4^{to}, It is plain, That as the Heritors, in the Right of the Patron, ought not to claim more than the Patron himself; nor the Elders, on the Act 1649, pretend to more than by that Act appointed; both which were unavoidably affected with this Consent of the Congregation, as is already made appear: So we find these Heritors and Elders entitled to no more by this Act 1690, than to *name and propose the Person to the whole Congregation, to be approven or disapproven by them*. Whereby the Election in this Act is, plainly described to consist in a Proposal made, and an Approbation following thereupon: For as the bare *Naming* and *Proposing*, are Terms which can by no Means amount to a compleat Election; so it is obvious, that this Election was meant to be finished by the Approbation of the Congregation, to whom this Proposal is by the Act appointed to be made; since that is the last Requisite, which by the Act itself finished the Question; and for the Want of which, the Election became a *lis pendens* before the Presbytery.

Now, further, with Respect to the Presbytery, before whom the Question thus comes to be disputed, it

is evident, that from the Necessity of their own Principles, and the Bonds above set forth, for which they had then lately suffered so much, as we already noticed, and shall afterwards make appear; particularly from that forecited Caveat in our second Book of Discipline, viz. *That no Man be intruded into any Office of the Kirk contrary to the Will of the Congregation*: It became impossible such Election, depending before them, should be otherwise finished than by a Reasoning with the Congregation on the Grounds of their Aversion to the Candidate, in order to obtain their Consent, or of the Majority of them, failing whereof, a new Election must have been attempted; which is already plainly made appear to be the very Rule prescribed by the Act 1649, in that Passage just now cited of the forecited Pamphlet. So that, from the whole of this Rule in the Act 1690, it is obvious, that it, not only contains nothing in Prejudice of this Consent we plead for; but, further, that it most evidently and distinctly points out the same, as thereby meant and intended.

510, The Practice that followed on this Act in a Consistency with these our Principles, as we already observed, is a further Evidence of the Intention of it. But if any shall think fit to alledge, That in some Corners of our Church, the Act was otherwise execute; as in that Case it was evidently their Sin to violate their Principles and Oaths, and without the least Necessity from this Act, so to their Shame be it told.

610, Altho' this Act, not only has nothing in Prejudice of this Consent of the Congregation we plead for, but seems plainly to contain it and point it out; yet, as the Heritors could never acquire any spiritual Right in this Matter, exclusive of their Christian Brethren; so the Right hereby created to them is plainly civil, and appears from the Act itself to be no other than an extended Patronage, by continuing the Patron's Right to the Heritors upon a Purchase; and therefore ought not on any Account whatsoever to become a Canon with a Church, who, in her Standards,
had

had so explicitly declared, that Patronage was contrary to the Word of God, as appears from the Passages above-cited; and even this her new Act itself complains of Grievances arising from Patronage.

On the other Hand, our Act of Assembly, altho' pretended to have been formed from this Rule in the Act 1690, stands thus; The Election of a Minister to a vacant Parish is thereby appointed to be finished in a conjunct Meeting of Heritors and Elders, while the Congregation is excluded from all Concern therein, save that they are admitted to be Spectators on that Occasion: And that, after the Election is thus finished, the Act appoints the Person elected to be proposed to the Congregation, to the single Effect that the Disapprovers may offer their Reasons to the Presbytery of the Bounds, by whose Judgment and Determination the Calling and Entry of a Minister is to be ordered and concluded, according to the Rules of this Church. Whence we observe,

1^{mo}, That, as, by this new Rule of our Church, the Election is finished by the Voices of the Heritors and Elders, who by the Act 1690 were entitled to no more than to name and propose a Person to the whole Congregation, by whose Approbation of the Candidate, the Election could only be finished, as we already observed: So from thence it is plain, that the Congregation, or the Majority of them, disapproving on the Act 1690, brought the Election itself before the Presbytery as a *lis pendens*, which could only be there finished, by a further Endeavour to obtain their Consent, according to the Principles of our Church, as we just now observed. Whereas, by this our new Rule, altho' the Disapprovers do still bring the Affair before the Presbytery, yet it comes there in a very different Shape, *viz.* as an Election already finished, and even further declared such by a direct Canon of our Church; whereby Presbyteries are interpellated from regarding any Thing from the Congregation, unless they can qualify an Objection, why such finished Election should yet
not,

notwithstanding by no Means be put to Execution ?
From whence,

2^do, We find another Difference betwixt these two Acts, viz. That as Objections to a finished Election are so exceeding different from what may be objected to an Election in Dependence, from the common Brocard, *Multa impediunt contrahendum quæ non dirimunt contractum*; So we were told in the Face of Assembly, by those who voted for this Act, That, unless the People could object to the Candidate's Life or Doctrine, no other Objection could be regarded by Presbyteries; most consistently indeed with this their new Rule. Now, as this is well known to be the present Practice of our Church, and that we can by no Means come at the Meaning or Intention of a Law so effectually, as from the Authors of it in the very Time of Enactment; so it plainly shows, that the Whole of this our new Rule was intended to justify and authorise that Practice; and both the Rule and Practice plainly meant to divest the People of their Consent in the Call of their Pastor.

For, as the Difference betwixt the Peoples Consent, and that of Objecting to the Candidate's Life or Doctrine, are plainly pointed out from Page 39. to 44. of the forecited Pamphlet; where it is made appear, that these two are *totò cælo* different from each other; especially that the People's Consent is really their Judgment anent the Candidate's being provided with Gifts sufficient for their Edification in particular; which on that Account is peculiar to the People of that Parish, exclusive of all others. Whereas this of Objecting to his Life and Doctrine, as it relates to his Incapacity to execute the Office of the Ministry any where in the Christian Church; is therefore, both by our Practice and the Nature of the Thing, the common Privilege of every Man, tho' not of that Parish, who can by a fair Proof make out the Charge. Whence it is plain, that, by restricting the People of a Parish to the last of these, they are evidently robbed of the first, which we have shown to be their Right, in the strongest Manner that it is possible for any Thing to be theirs.

From the Whole it is evident, that, as, by this our new Act, the People of a Parish are plainly divested of their Consent in the Election of their Pastor, provided to them by every Act of our Church preceeding this Act complain'd of, and in which they are neither hurt nor prejudged in any Sort by the Act 1690; So it is plain, that the whole Conclusions above-mentioned do affect this new Act of our Church itself, as well as our present Practice thereby intended to be justified. But further, even admitting this our new Rule had been founded in the Act 1690, and even transcribed therefrom (which it is more than evident it is not) yet we cannot help thinking, that neither the one nor the other could possibly warrand our Church, to the Prejudice of these Bonds and Obligations above-mention'd; especially where she was not under the least Necessity to induce her thereto.

370, We find our Act appoints such Settlements to be ordered and concluded according to the Rules of this Church: Which is an Expression somewhat doubtful as here stated; Yet, when it is taken in a Consistency with what goes before, it is plain, that by the Rules of this Church, in Case such Settlements are disputed, they must run thro' the different Judicatories till they land in the Commission, whose Aversion to shew any Regard to the People, is now run to that Height of Extravagance, that they can thrust in a Minister upon them, even against the utmost Opposition of both Parish and Presbytery; while the former cannot thereafter be prevail'd with to submit to him as their Minister, and the latter as little to admit him as a Member of their Society, lest they should be involved in the foresaid Conclusions.

470, We observe, That, as this our new Act is in the Case of the *jus devolutum*, in which the Patrons Right being expired, our Church is, by that very Patronage-act itself, left in the fullest Freedom to the Execution of her own Principles; And therefore it might have been expected, that so much Regard was due to these, as that, admitting the Election must be performed

med by Heritors and Elders, yet it might have been with the Addition of Heads of Families; which, as we observed, was the Practice on the Act 1690 itself; so it would have satisfied the discontented Part of the Nation: Yet, by this our new Act, the Election is appointed to be finished by the Heritors and Elders, by themselves or their Proxies, in the extravagant Manner after-mention'd, while, by the Indulgence of the same Act, the Congregation is allowed to witness such Execution of this Election, which by the Principles of our Church, as above, is declared to belong to themselves.

Now, altho' this Concession anent the positive Part of Election in favours of the People, could not be obtained; yet, if their Consent had been reserved to them, or at the least it might have been expected that some proper Caveat should have been allowed to enter the Act, whereby the present Practice of violent thrusting Ministers upon Parishes might have been prevented; yet, at forming this Act last Assembly, no such Thing was allowed to enter into it: So that thereby the Presbyteries, as well as Congregations of this Church, are evidently barred from the Execution of their own Principles in this Point, to the manifest Prejudice of the Bonds above-mentioned, from our Standards, Oaths and Laws.

SECTION IX.

AS to our fourth Reason of Protest, we observe, That altho' Episcopacy was imposed by the State upon our Church from the 1606 to the 1638; yet, even during that Period, we find no Attempt made upon the popular Elections of Ministers, which was everywhere execute both in Town and Country till the Year 1624, *when, as Bishop Spotswood observes, in that forecited Passage, the Popular Elections were then first changed in the City of Edinburgh, which was thereafter performed by the Magistrates and Town-Council.* Mr. Calderwood gives a most particular Ac-

count of that whole Affair, with the Proceſs that hap-
pened on that Occaſion, *Page 803.*

And, as to the reſt of the Nation during this Period,
we find, That altho' Patronage was then in its full-
eſt Force, yet Preſentations were everywhere affected
with the Conſent of the People. But, becauſe our Evi-
dence of this Fact conſiſts in ſome Preſentations grant-
ed even by the Biſhops themſelves, down as far as the
1630, and yet extant, which are expreſſly burdened
with this Conſent; and altho' theſe are ſuffici-
ently probative of the then Practice, yet, being but
private Documents, we ſhall not trouble the Publick
with them;

But ſhall only obſerve, That as far down as the
1635, when a violent Settlement was attempted, by
thruſting in a Miniſter upon the Town of *Kirkcud-
bright*, the ſame was as ſtrenuouſly oppoſed by the
Burgh; and for which the Provost of that Place,
being conven'd before the Privy-Council, he was then
and there juſtified in his Oppoſition, as appears from
the Council-Record. And we find Mr. *Samuel Ru-
therfoord*. in his Letter to the Provost's Wife (dated
July the 8th that Year, being the 32d Letter of the
3d Part of his printed Collection) enjoining her to en-
courage her Husband in his Oppoſition to that Settle-
ment as being his Duty before God: And further, not
only adviſes to conſult Lawiers, how far the Oppo-
ſition may be juſtified in Law; but alſo mentions, That, if
her Husband is the firſt Magiſtrate in *Scotland* who
ſhall ſuffer any Thing in ſuch Oppoſition, he ſhall be
no Loſer at God's Hand: Which, as it was ſo near the
End of this firſt Period of Episcopacy, it is a plain E-
vidence that ſuch Intruſion was even then new.

We proceed to our fifth Reason of Proteſt, anent
which we obſerve, The Aſſembly 1639 finding, that
altho' our Church had with ſo much Labour and An-
xiety, during her firſt Period from the Reformation,
eſtabliſhed the Articles of her Conſtitution, and ob-
tain'd them ratified as above; yet her Experience
ſhew'd, that even ſuch was inſufficient againſt the
difmal

dismal Defections and Alterations which had been introduced upon her, even by Assemblies themselves, when under undue Influence; as was her Case in the next subsequent Period, from the 1606 to the 1638; and which could not be prevented in Time coming, unless some proper Check was provided against Assembly-Acts: Did therefore, by her Act the 30th of August 1639, *To the Effect that the then Reformation being recovered, might be established; STATUTE and ORDAIN, That no Novation which may disturb the Peace of the Church, and make Division, be suddenly proposed and enacted: But so as the Motion be first communicate to the several Synods, Presbyteries and Kirks; that the Matter may be approved by all at home, and Commissioners may come well prepared unanimously to conclude a solid Deliberation upon the Points, in the General Assembly.*

And which Act, as it so exceedingly related to the Constitution of our Church, and the Preservation of that Reformation then attained, was therefore renewed by the 9th Act of the Assembly 1697, by which that Assembly, *taking to their Consideration the then late Overture concerning Innovations, &c. and having heard the Report of Presbyteries thereanent, &c. and considering the Practice of former Assemblies, &c. and for preventing any sudden Alteration, or Innovation, or other Prejudice to the Church, either in Doctrine, Worship, Discipline or Government; do therefore appoint, Enact and Declare, That before any General Assembly of this Church shall pass any Acts, which are to be binding Rules and Constitutions to the Church, the same shall be transmitted to Presbyteries, &c. and their Opinion and Consent reported to the next Assembly, &c. who may then pass the same into Acts, if the more general Opinion of the Church agree thereunto.*

From whence it is evident, that, as these Acts were thus contrived by our Church as a Bar against Innovations, or any Alteration in her Constitution, even from Acts of Assembly themselves, by thus fixing the
Validity

Validity of all such publick Acts upon the Judgment of the whole Church, or at least of the Presbyteries of it, anent the Expediency of any such new Rule or Church-canon to be made in Time coming; since the very last Act authorises the Enactment of such new Law, only in Case the more general Opinion of the Church agree thereto: So it is plain, that these Constitutions of our Church can have neither Meaning nor Effect against an Assembly intending or attempting Innovations, if they do not afford a good Argument, that the Obligation and Validity of any such Acts of Assembly, which shall happen to be execute to the Prejudice of this Barrier of our Constitution, is *ipso jure* null, as flowing *a non habente potestatem*. And from which Acts, and the Reason thereof, it is most plain, that the Presbyteries of *Scotland* can never be obliged to the Obedience of any such Act of Assembly, to which themselves, or the Majority of them, have not thus explicitly consented. All which is obvious, when it is considered, that as a Law can never be *de jure* enacted in the Want of any Consent which is thereto by Law required; so it is plain that this Law anent the Consent of Presbyteries must necessarily be repealed, before any Act of Assembly execute in Prejudice of it can possibly bind or oblige.

Now, to apply this to the Act in Question, It is obvious from the Report of Presbyteries anent this Act, as stated in this sixth Reason of our Protest, that their Consent to the Act complained of was refused; and therefore we do, on the foresaid Grounds, insist on the Nullity of it. Besides that, the Intention of our Assemblies to rob our Church of this most valuable Barrier against Innovations further appears, from that late Act of Assembly 1730, against recording of the Reasons of Dissent; which, as it was never thus transmitted to Presbyteries, so it is in itself another Encroachment on the Constitution, in that it discharges the Recording of all Reasons of Dissent, contrary to the natural Right of the Members of Court, contrary to the former Practice of this Church, and is an eminent Injury to subsequent

sequent Generations, as by our preceeding Introduction at more Length is set forth. And even a further Innovation which attended this Act anent Settlements now complain'd of, was, That, the same being proposed as an Overture in the Assembly 1731, it was immediately transmitted to Presbyteries, without being allowed to ly on the Table till another Sederunt, for the Perusal of the Members ; contrary to the Act of Assembly 1700, and which we never observed to have been so much as attempted before this Act.

Now, as these Attempts against this valuable Part of our Constitution, whereby the Hedge of our Church against Innovations is so far broken down, does much disquiet Peoples Minds with Jealousies anent the Consequences, which we incline to hope are still without Ground ; but cannot help thinking, that so much Offence ought by no Means to have been given. And therefore we proceed to consider the Apologies that have been offered for these Proceedings.

1^{mo}, It is alledged, That the Members of Parliament are not bound by the Instructions of their Constituents, and neither ought Members of Assembly. We answer, It is very true that Members of Parliament are not so bound, nor would Members of Assembly but for these their own Constitutions ; for, was there any Act of Parliament appointing the Transmission of new Laws to the Consideration of Freeholders and Burrows for obtaining their Consent, it is certain no Law could be enacted till that was obtain'd : But, altho' that is no Part of our Civil Constitution, and therefore not needful ; yet, amongst other States, as in *Holland, Poland, &c.* where this Consent of the Constituents is by Law required, it is certain their Laws cannot be enacted without it, from the obvious Reason we just now mentioned, That it is impossible Laws can be *de jure* enacted in the Want of any Consent thereto by Law required, *Nam quod contra jus fit est ipso jure nullum.*

2^{do}, It was alledged for our Act last Assembly, That the Overture thereanent, which was transmitted by the Assembly

Assembly 1731, did appoint, That, if Presbyteries neglected to send up their Opinions to the then next Assembly, in that Case the Assembly might proceed to pass the Act into a Law, notwithstanding of the Want of such Consent from the Presbyteries; since thereby their positive Approbation is presumed from such their Neglect.

But then it must be further observed, That, altho' in that same Assembly 1731, when this Transmission was enacted, it was earnestly urged, that because of this Clause adjected, founding a Presumption on the Neglect of Presbyteries, therefore the Clerks should be appointed to execute a punctual Transmission of it to every Presbytery; Yet the same was expressly refused; alledging for the Reason, That it was the Duty of Presbyteries to purchase the printed Acts, where they would find it.

Now, that it is the Practice of many Presbyteries, especially of those at a Distance, to purchase those printed Acts but once in some Years; it was unavoidable, that many of them should never hear of it: For, altho' a Transmission by the printed Acts, might be sufficient in ordinary Cases, where the Assembly means to wait patiently the Report of Presbyteries; Yet, when by this extraordinary Clause adjected, they were thus to presume their Consent from their Neglect; how unreasonable was it thus even to risque what so exceedingly concerned the publick Interest of the Church and Nation, to force the punctual Purchasing of a few Acts? And how much more unreasonable and absurd was it, to presume such Consent of Presbyteries, from their Report, which is plainly negative of it? Or, to alledge from Mens Silence their Consent to a Thing they know not, and of which they were even thus refused the Means of that Knowledge? The common *Brocard* says, *De non apparentibus & non existentibus idem est judicium*. But, as the simple Narrative of such Management is sufficient to expose it, we forbear to insist further upon it, save that we cannot help thinking, that,

as it really points out the Shift to elide the Law, so it shews the Intention to get rid of it, if possible.

310, It was further alledged, That the Overture transmitted by Assembly 1731, was last Assembly so effectually altered and innovate, as that it must become acceptable to every Presbytery, at least to the Generality of them. To which we answer, That this is truly *gratis dictum* by our Church; because, as Presbyteries might have great Variety of Arguments against this Act; so, each Presbytery having offered what to them appeared sufficient, more might seem needless. Besides, as we just now observed, that a positive Consent can never be inferred from what is thus negative of it. So what for ever excludes this Apology is, that what we have offered in the bypast Part of this Paper, plainly shews, that the Act, even as it stands, ought never to be enacted.

410, In order to discredit this Report of Presbyteries, a private Resolution of the Assembly 1729, relative to the Process against Professor *Simpson*, was introduced; by which that Assembly resolved, that no Member of the House was tied down to act or vote according to the Instructions from Presbyteries, but that every Member was at Liberty to give Judgment in that Process, as God should direct, after hearing all that might be said upon the Cause; which was accordingly intimate to the Professor. Now, of whatever Consequence this Process might be to our Church, as it related to the most valuable Articles of our Doctrine; yet it is plain, that it was still a private Man's Cause, as it concerned his Condemnation or Absolvitor; and therefore, seeing there was no publick Law of our Church requiring such Transmission, so the Report thereupon could not influence the Judgment, since the Consent of Presbyteries is nowhere required to Deeds of Assembly, save only when a publick Law is to be made.

Besides, as it was thus a private Cause, it was from the Nature of it impossible that the whole Members could be influenced by any Consideration, other than

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the Merits of that Cause ; in which the Professor's own Recantations and Acknowledgments, with several other Things, were necessarily included in the Judgment, which were never before the Presbyteries. Wherefore, as the private Resolutions of Assembly, anent their Manner of proceeding in a private Cause, is so exceedingly and *toto cælo* different from these publick Constitutions in our Church anent the Manner of enacting Laws ; so the Reasoning from the one to the other is plainly absurd.

510, Because we mentioned the Act of Assembly 1730, anent Dissents, for which this Apology is offered ; That the Reasons of Dissent were often extended to such extravagant Length, that they frequently consumed the Records with what was neither worth reading nor inserting. *To which it is answered,* That it is altogether absurd to statute the Destruction of a Right, because of an Abuse of it, which by Means less severe might have been sufficiently amended ; for this Abuse might have been prevented, by confining Reasons of Dissent to a Leaf, two, three or more, as the Church saw proper, or by imposing some small Payment for every Page of such Reasons of Dissent, which we are sure would have effectually restrained that Abuse. But then, all this makes no Apology for enacting that Rule without Transmission to Presbyteries, which is the principal Ground of our present Complaint against it, and for which no Excuse is offered, save that their Consent was not to be expected : But this Answer will justify any Innovation how extravagant soever the Assembly shall think fit to introduce.

Upon the whole it is most plain, that, as this Part of our Constitution was meant and intended as a Security to our Church against Innovations of all Kinds, whether contrived of Design, or that they are only the Effect of Mistake and Precipitancy ; of which last the Act in question is a most eminent Instance : For, as it shews to what Absurdities our Church may be brought by such precipitant Resolutions, so it
points

points out how valuable this Part of our Constitution must be, since Church-Canons can never be too much deliberate ; and therefore, not only demands an explicate Repeal of the Act now complained of, which we still contend to be null in itself for the Reasons fore said, but also that these other Acts anent Trans- mission and Dissents should be restored to their former Execution and Observation in the Church.

SECTION X.

WE come now to consider our last Reason of Pro- test, concerning which, having already sufficiently considered our new Rule of Election contained in our Act complained of, we intend to finish this Section with some further Observes on the rest of the Tenor of that Act ;

1mo, It was everywhere handed about last Assembly, That our Church had no established Rule anent Settlements of Ministers, and therefore most necessary that some new one should be enacted ; accordingly we find our Act beginning with a plain Insinuation of this Kind. Now, altho' we incline to admit of this Mistake as an Apology for the late Assembly's Procedure therein ; yet we expect to hear no more of it in Time coming, since by this Time we hope it is more than evident there was a Rule, and that as old as our Reformation, established on a stronger Authority than any single Act of Assembly can pretend to : And, seeing the Act so far proceeds upon a Falshood in Fact, it calls for a Repeal of it.

2do, The Reason inductive of this Act proceeds, by insinuating a further Reflection upon Presbyteries, in that their Method of proceeding in this Matter had not been uniform ; which Charge was set forth more explicitly in the Draught transmitted to Presbyteries, as the only Reason of making the Act. To which we answer, by acknowledging the Charge ; but then it must be obvious to every Man, that the Patronage-

act on the one Hand, and their just Regard to their own Principles on the other, made it impossible for them on every Occasion to follow out the self-same Method.

Wherefore many of them do with much more Justice complain of the Commission of our Church, in that they have of late Years exercised rather too much Uniformity in their executing the Patronage-act everywhere, in a Manner that is more rigid than the very Tenor of the Act seems to require: And in that our Assemblies do as uniformly from Year to Year affirm such their Sentences, altho' they at the same Time censure their Conduct; while the Commission notwithstanding proceeds in the self-same Method, without the least Regard to such Rebukes. Which Conduct of our Assembly, in the Eye of any sober Man, can amount to no more in the Effect, than that they formally disapprove, but do materially approve, of that Conduct of our Commissions; and how such Management is, and shall be treated by the disinterested Part of Mankind, we forbear to mention.

The only Answer to this is, *1mo*, That, were it otherwise, our Church-processes might run in a Circle betwixt Assembly and Commission, whereby our Church must be much disturbed in her Peace and Quiet by the Length of Pleas. *2do*, That these Sentences of the Commission, being only in private Causes, do by no Means amount to any publick Act or Deed of our Church, in Prejudice of her Principles.

To the First we reply, That, even admitting the Answer to the utmost Extent, yet it plainly locks our Church into a Defect in her Constitution, whereby such Things are done; to which altho' she can by no Means yield her Approbation, yet she can as little redress them, nor imagine the least Remedy whereby a Course of such Practices may be effectually prevented in Time coming. Besides that, the Apology seems to amount to no more than that our Church chuses rather to resign her Principles, than induce any considerable Disturbance to her Ease and Quiet; since, by avoiding

avoiding that *Circle*, she is like to fall into a much worse *Circle*, namely, that the Commission shall still proceed in a Violation of our Principles, and our Assemblies under a Necessity of affirming such Violations from Year to Year, till these our Principles are lost and buried in an opposite Practice.

To the Second we reply, That, altho' we do grant as indeed we have already pointed out, a material Difference betwixt an iniquous Practice and a publick Law justifying such Practice; yet we must be allowed further to notice the Connection betwixt these two: That, even supposing such Practice to be void of all malevolent Intention, and really to be the simple Effect of an imagined Necessity, as is the Case of these violent Settlements on the Patronage-act; yet from the very Nature of Man it is evident, and constant Experience proves it, that, where we are once involved in a Practice, we necessarily affect Opinions whereby to justify such Practice, and as earnestly attempt to have these Opinions established into Rules, in order to complete that Justification. Thus we find, that, of late Years, the Current of our Church-Decisions has been to exclude the People from their Concern in the Call of their Ministers: To this Practice it became consequent, that the People's Pretensions thereto were everywhere the Subject of Joke and Ridicule, which therefore must produce this new Act, whereby these their Pretensions are for ever cut off, even in the very Case of the *jus devolutum*, wherein our Church is left in the fullest Liberty and Freedom.

Now, in the very same Manner with Respect to the Patronage-act, we find, that, notwithstanding of our former Principles and Practice since the Reformation thereanent, yet the Commission of our Church has of late Years adventured on a most rigid Execution of it, and the Assembly in affirming such their Judgments from Year to Year; and, as such Proceedings must produce new Opinions, whereby to justify the Practice, and in which Opinions we are already considerably advanced; so it appears to be unavoidable

voidable, that some new Law must be hereafter formed, in order to effectuate an Uniformity through the Church in that Point.

3^{to}, The Act proceeds further to appoint, That provided the Patron shall, within the six Months, consent to have the Parish settled in the Manner by the Act appointed ; in that Case the Presbytery shall proceed to such Settlement : Which plainly insinuates, that no Presbytery is to attempt any Settlement within the six Months, altho' the Parish should shew never so much Disposition and Harmony about a fit Pastor, till the Patron's Allowance is obtained ; which is thought, by many to be too much Acknowledgment of the Patron's Right, or at least a greater Countenance given thereto, than ought to have been given by this Church.

4^{to}, That upon the first Draught of the Act, which was transmitted through the Church, many Presbyteries did greatly except against it, because no Expression was allowed to enter into it, whereby Patronage was acknowledged to be a Grievance to this Church, altho' that had been much insisted on in the then preceeding Assembly : To obviate which, a cautious Expression is allowed to enter the Act, whereby a Complaint is insinuate, of the *Grievances arising* from the Patronage-act ; which is exceeding different from owning Patronage itself to be a Grievance : For it is obvious to every Man, that Grievances may arise, and do daily arise from the Execution of a Law, while the Law itself is by no Means a Grievance ; so that the Acknowledgment of the one, can by no Means amount to the Acknowledgment of the other. Thus, without any further Instance, it is our very Case with Respect to the Patronage-act ; as to which our Grievances do not so much arise from the Act itself, as from that rigid Execution of it, which our Church has thought fit to practise upon herself.

But to this third and fourth Observe it is answered, That, as it is by no Means warrantable to complain of a Law as a Grievance, otherwise than by a direct Appli-

Application to the Legislature towards a Repeal of that grievous Law ; therefore such direct Complaint against the Law as a Grievance, could not be allowed to enter the Assembly's Act : Nor was it possible, for the like Reason, that Act should either allow or authorise Presbyteries to do any Thing within the six Months without the Patron's Consent, as being contrary to the Law. Altho' we should admit of the Answer, yet the same resolves into a good Argument, why no such Act of our Church should have been made, since thereby she is brought to this miserable Dilemma, either to hurt her own Principles, or utter what is unwarrantable against the State.

510, The Act gives the Election to Heritors and Elders, exclusive of their Christian Brethren ; and, had it been to such Heritors only, as were daily Subjects of the Candidate's Ministry, the Concession had been somewhat more decent ; but no Limitation is allowed, other than that of being Protestant : So that Heritors, whether *Arians*, *Socinians*, *Arminians*, *Quakers*, or any other Sectaries, *Episcopals*, and Persons disaffected to Church and State, non-residing Heritors who are not of the Parish ; the Majority of these, or either of them, by themselves or their Proxies which they please, must make the Election : A Rule so extravagant, that it knows no Precedent by any Church-Canon that ever we heard of.

The Act of Parliament 1690 does indeed impose no Limitation upon Heritors, but that of their being Protestant ; however it appears, they soon after discovered their Mistake : For, by an Act of that same Parliament 23d May 1693, they appointed, That, not only Heritors, but all others pretending to vote in the Call of a Minister, shall swear the Allegiance, and subscribe the Assurance ; from which it plainly appears, that they meant this Privilege only to the Friends of our Constitution : And, even admitting this Restriction had been omitted ; yet, as the Patronage is in its Nature a Civil Right, the Transmission thereof to Heritors, of whatsoever Denomination, by this Act 1690

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(as we already shewed such was the only Right thereby acquired) is in some Sort justifiable, as being in the Power of the Legislature to command such Sale thereof: Whereas our Church, on the other Hand, having nothing to give that is Civil, thus pretends to assign them to a Spiritual Right, by no Means at her Disposal, as we have already made appear; and for which no Warrant is pretended from the Law of God or Man.

But, because by this new Rule the Right in question is created so exceeding *Predial*, that it looks as if it were an Accession of the Ground, as real as the Crop itself: And altho' the Argument, That Heritors maintain the Minister, is so very groundless, that most People are ashamed of it; yet, that some do still insist upon it, supporting their Argument with an Allegation, That the primitive Christians were intitled to this Choice of their Pastors, because they maintained them, we shall offer the following Answer,

1^{mo}, It is denied that such Maintenance could be the Cause of the primitive Election of Pastors; since it is certain, that, altho' the Maintenance could only proceed from the Rich, and those who had it to give; yet the Election was performed by the whole Congregation of the Faithful, the Poorest not excepted. Besides that, was such the true and proper Cause of Election, it must follow, from the necessary Connection betwixt Causes and their Effects, that the Rich must be intitled to Voices therein superior to the Poor, in Proportion to the Sums contributed; which was altogether foreign to the primitive Practice. Nor does it anywise help the Argument, that by the Gospel the Widow's Mite is equal to the largest Contribution, seeing that relates allennarly to the Matter of Acceptance in God's Sight, but could never be meant to void the Connection betwixt Causes and their proper Effects, as founded in the unalterable Nature of Things, and of Justice itself. Besides that, many of them being maintained on Charity, had nothing to give that was theirs, not even the Mite itself; and yet were by no Means

excluded the Election : So that, as this could not be the Cause it is already made appear to have had a more noble Original, from Page 27 to 33 of the forecited Pamphlet.

240, Even admitting that such had been the Cause of Election, we further affirm, That the Heritors of *Scotland* do not maintain the Ministry : For, as it is certain, we had Bishops here from *Rome* in the 5th Century (*a*), who doubtless were not negligent to introduce from thence the Payment of Tiends, as the proper and most effectual Fund of the Church's Maintenance ; and which Payment some of our Antiquaries affix to the 6th Century (*b*), while the seuing out of our Lands was not execute till the Beginning of the 11th Century by our King *Malcolm Canmore*. And altho' the Penury of our Histories of these ancient Times, makes us uncertain as to the precise Time when that Payment was first introduced ; yet, that we contend to have Lands *cum decimis inclusis*, which must have been before the third *Lateran Council Anno 1179* ; and further, that by a Council held in *Scotland*, Anno 1225, the Statutes of which are yet to be seen in the Chartulary of *Aberdeen*, it is ordained that Tiends be paid *iis ad quos pertinere noscuntur i. e. Personis & Vicariis*. It is evident, that, as the Tiends were thus past all Memory the Fund of our Church's Maintenance, and were on that account from Age to Age deducted and excepted in all Sales and Alienations of Property, (as the Stipends are everywhere at this Day) since it was impossible that Men should at any Time pay a Price for what was for ever incapable of Sale or Transmission ; It is thence a most groundless Assertion, That the Heritors maintain the Minister more than the Tenants.

310, As we already observed, That our Church at the Reformation was possessed of a Revenue so great, that, even abstracting from their Temporalities, the Tiends themselves did by far exceed any Maintenance she had ever since ; so it thence follows, that she can

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(a) *Buch. Hist. B. 5. on the Life of Dongardus 41 King.*

(b) *Spotisf. Hist. p. 9.*

no more be said to be maintained by the Heritors of *Scotland*, than a Man, who having made a large Donative to his Friend, whereof he has only retained a small Part for his own Necessity, can be said to be maintained by such his Friend. So that the Case comes out so far the Reverse, that it is certain the Heritors of *Scotland* are considerable Debtors to our reformed Church for a most valuable Part of their Substance, not only in Lands and other Rights, but even in the very Matter of the Tiends; Inasmuch that an Heritor paying the whole of his Tiend to the Minister (which is but a rare Case) yet is he still *lucratus*, in that he now pays only a 5th, which could be made appear to have been before above a 4th of his Rent.

It is an Argument as little to the Purpose, and yet earnestly urged by some, That such Maintenance with us proceeds from the State, by whose Regulations anent the Settlement of Ministers, it is become impossible for our Church to execute her own Principles with such Freedom as she would in case the Maintenance were the private Contribution of the Subject. To which we answer, That it is evident Ministers are not maintained by the State: For, as the Law is the common Fountain of all Right whatsoever, whether to the King, or to the Subject; to this same legal Authority, which creates to Heritors a Right of Property in the Lands, has also created to Superiors a *debitum fundi* for their Feu-duties, and to Ministers a *debitum fructuum* for their Stipends, each of these, for the Terms of their Endurance, as real and effectual in all Respects as the Heritor's Right of Property can be; and, in all Competitions, even prior and preferable thereto.

Now, it does by no Means follow, That all or either of these are subjected to any arbitrary Disposal, even of the State itself: They are indeed subject to the wise Regulations of the Law, as every Thing within the Society must be, in a Consistency with the Rules of the Gospel, to which Christian States as well as private Persons are unavoidably bound. And, even altho' these Stipends were the private Contribution of the subject,

Subject, they would be still in the same Manner liable to such Regulation and Disposition: Wherefore it is from this very Christian Disposition of our Law, ancient Settlement of Ministers, as above set forth, that we found our Plea against this arbitrary Disposall of our Church. Nor can we help thinking, that it reaches a most severe Rebuke to her, that the very Civil Constitutions of the State should contain more of the Gospel than our Church-Canon itself on this Point.

But, to conclude this last Reason of our Protest, we observe, That the Grant of this Right to Heritors is execute in a Manner so extravagant, as above set forth, that it even contradicts the most necessary Laws of Civil Society; in that Persons, who neither are, nor even would upon any Account condescend to be, assumed Members of a Society, should yet notwithstanding be vested with a Power to thrust in upon such Society the very principal Directors thereof (for such Ministers must be in the Church:.) Inasmuch, that we are perswaded many of those Gentlemen, whom our Church means thus to favour, have too much Honour to thank her for this preposterous Assignment.

CONCLUSION.

WE doubt not but it may be here alledged by some, That the Right in Question is not of that Consequence, to be the Subject of so much Dispute. To which we answer,

1^{mo}, This Right cannot be so indifferent as is imagined, in that, ever since Christianity was countenanced in the World, we find Emperors, Kings, Princes and other great Men most earnestly contending about it; while the Church at the same Time finding, from her dismal Experience, that bad Men once entred into the Church never failed to be the Instruments of her Ruin and Defection; did therefore judge, not only that the Door of Admittance was of the last Consequence,

but also that it was safer in the Hands of many than of a few: Wherefore it was thus by our Church established an Article of her Policy and Discipline, as above.

2^{do}, It is founded in the Experience, not only of Churches, but even of private Christians, that our Defections from our Duty are, as *Solomon* tells us of Strife, like the Breaking-in of Waters, *que vires acquirunt eundo*; so that it has always been found necessary to resist these *in limine*; seeing, if the Disease is once allowed to grow, our Attempts become vain and ineffectual; which obliges us to state our Opposition, even in this very Article of Defection from our former Principles.

3^{tio} That it is thus an Article of our Discipline; and which Discipline we find was by our Reformers intended as the Hedge of their Doctrine, and therefore the very Cause of their great Anxiety about it, as above-observed, particularly from that forecited Act of Assembly 1578, and many other Evidences, were it needful. Besides that, the Case is most obvious; for, so long as our Discipline is duly maintain'd, it is plain our Doctrine cannot be hurt: Wherefore it is that we have founded our Opposition to this Attempt upon it.

4^{to}, The Ratifications of this Right already mention'd do make it of the very last Consequence to our Church, and even justify the utmost Opposition we are able to make; since, if these Bonds are allowed in any Sort to be violate, there is nothing that remains valuable in our Constitution, either as to Doctrine, Discipline or Government, which can be secure: On which Account we acknowledge, that we have indeed exceeded what was needful to vindicate our present Question, with an Intention to set forth our Constitution, and the Security upon which it stands, at present too much forgot.

5^{to}, It is to be remembred, that the whole Troubles and Disturbances in King *Charles* the Second's Reign, did begin with thrusting in Ministers upon Presentations by Patrons; which could be made appear from the History of these Times, and particularly from *Wewer's History*, Vol. 1. Page 177, where he gives the Account

Account from the Registers of the Privy-Council, that the first Opposition on that Head was made in the South and West Parts of the Nation, particularly at *Kirkcudbright*, *Irongray* and *Dumfreis* where these Tumults began; to suppress which, first a Committee of the Privy-Council was sent out, and after them the Forces under the Command of Sir *James Turner*, to compel the People to hear these new intruded Ministers.

Yet nothing could prevail with the People to that Compliance against their Conscience; for (Page 184, 185) they first seized some of the Soldiers, from whom they had suffered most intolerable Usage; and then proceeded to *Dumfreis*, where they seized Sir *James Turner* himself; after which, having thus become obnoxious to the Government, and growing in their Numbers and Strength, they never laid down their Arms till they concluded in the *Pentland* Engagement; as appears from Page 241 of the forelaid History. And thereafter, through the whole of King *Charles's* Reign, notwithstanding of the severest Laws then enacted to oblige the People to hear such Ministers, and which were from Time to Time repeatd by the severest Penalties most rigidly execute, yet they chused rather to suffer the Loss of all, than to submit to that Compulsion.

Now, it is plain, that it was not Episcopacy alone which was the Cause of their Aversion, seeing that Form of Government had been in the Church from the 1606 to the 1640, without causing any such Disturbance; because, as was observed, during that first Period of Episcopacy, the Intrusion was by no Means attempted on the Church, notwithstanding of the Patronage then still retain'd; from which it became consequent, that the People could not refuse Subjection to a Ministry which themselves had acknowledged, and had even bound themselves in their Call to submit to their Ministry.

Whereas, upon the Restoration, a rigid Execution of the Patronage being introduced, which our Church never

never knew before ; it is plain that it was the Intrusion join'd with the Episcopacy which for ever compleated their Abhorrence ; while the People laboured under a firm Perswasion, that such Ministers as were not called by their Flocks, could not be Ministers sent of God ; and, on that Account, could not be submitted to without a Sin : And to which Principle they had been train'd up from the Reformation, as appears from that forecited Passage of our second Book of Discipline ; whereby they charge *all Persons who embrace God's Word to embrace also that Order of Settlement which they had established, and God's Word required, else it is in vain they profess the same.*

From the Whole we beg leave to think, that 'tis Time for our Church to desist from this Violence in Settlements, unless she means to separate the Ministry from the People of *Scotland* ; and that our Claim of Right mentions the Inclinations of the People to be the very Cause which induced our Legislature to restore Presbytery in the Church : Should therefore such Separation happen, we may then come to have it told us, *Sublata causa tollitur etiam effectus.*

6to, It is so frequently alledged to excuse the Matter, That this Rule was the best could be made of it in our present Circumstances, whereby it was meant to oblige the Heritors of *Scotland* by a favourable Regard to them in this Question. To this we answer, That, had the Right in Question been absolutely at our Disposal, without any Restraint either from the Word of God, as our Standards bear, or from our Constitution, as above set forth, there are none should be more frank than we to forward the Compliment : But then, as 'tis evident that this Right is already given, and in a Manner so strong and effectual, that 'tis for ever impossible to be retracted or of new given ; inso much as we are perswaded the wise and judicious Part of the Heritors of *Scotland* would even rather incline to justify our Opposition than our Church's extravagant Compliance in this Matter. Besides that, it is utterly absurd for any Man to pretend, that such Violation of his Principles, rati-
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fied as above, was the best he could make of this or of any other Case whatsoever.

7mo, We are at a Loss to find out what good Purpose such new Rule can answer, since 'tis evident that an Obedience thereto cannot be expected from Presbyteries, without involving their Consciences in a Breach of the strongest Ties and Obligations to the contrary that could well be thought of, or that even our Church herself could contrive; insomuch that even their being obliged to yield a posterior Compliance with such violent Settlements, is a Hardship put upon them; as is the Case of the Presbytery of *Dumfermline* with respect to the Parish of *Kinross*, at present in Dependence: Now, altho' we by no Means deny our Church's Authority *de facto* to put her Sentences to Execution, and even to punish by Deposition in Case of Non-compliance; yet 'tis to be observed, that the Severities we suffered in King *Charles's* Reign, were, not only that Men were punished without Order of Law, but also that Laws were then enacted to which Men could by no Means yield a Compliance for the Sake of their Consciences, and for which they were punished by these Laws. Now, if our Church shall proceed to enact Laws thus grievous to Conscience, and, when made, caule them to be put to such severe Execution, 'tis hop'd she will not refuse to be concluded in the same Condemnation with the Administrators of that Reign, of whom we, both then and ever since, have complain'd so heavily.

LASTLY, Altho' by this Time it is sufficiently evident, that the Offence is really given by our Church; yet, that we already noticed, we meant only to point out what we believed to be wrong, without any personal Resentment against our Bretheren, even for that very Wrong, which we incline to believe was rather the Effect of Mistake and Inadvertency, than of any malevolent Intention. And on that Account we are still induced to hope and expect from our Church a Redress of these our Grievances; which, however, if it is not speedily yielded, we in that Case cannot help ~~stinking~~

thinking, that 'tis the Duty of every Presbyterian in *Scotland*, as far as their Station will permit, to testify against all such Encroachments on our Constitution and Establishment, whether by violent Settlements or otherwise.

For, as we can by no Means understand that Peace, which is either sought or maintain'd to the Prejudice of Truth; so it is certain, that, had our Ancestors been but half so much mindful of their Ease and Quiet, as we at present seem to be of ours (none of us excepted) we might have been all Papists to this Day; at least, to their Opposition in the last Age, it is in a great Measure owing that we feel the agreeable Effects of our Revolution-establishment, of which that forecited Passage of our Claim of Right is a sufficient Evidence; and yet these our Ancestors in their Day had the same Huz and Cry raised against them, as Disturbers of the publick Quiet, and so had the Apostles before them, *Acts* 17. 6.

F I N I S.

N. B. In the Beginning of Section 3. Page 22. the following Particulars are omitted; viz. That, by an Ordinance of the Council of *Scotland*, dated the 29 April 1560, our Reformers were appointed to draw up the Articles of our 1st Book of Discipline, which was accordingly execute against the 20th of May following. It was approved by the Council of *Scotland* the 17. of January thereafter, which was still 1560, the Year at that Time commencing in March. It is true the 1st Assembly of our Church was in the December that Year; and altho their Minutes are so very general (consisting only of a few Sentences) that there is no mention of the Book of Discipline; yet without doubt the same was then agreed to, since it is not to be imagined the Council could thus approve of it, in Case the Church any ways differed about it: But especially that, within 19 Months thereafter, we find the Assembly, in July 1562, would not admit Mr. *Alexander Gordon* Bishop of *Galloway* to the Superintendency of that Country, till he subscribed the same first Book of Discipline; which plainly shews it to have been the agreed Standard of our Church, otherwise Subscription could not have been thus demanded. And which (as Mr. *Caldorewood* observes) yet further appears from the many Subscriptions subjoined to the Book.